FEB 21 1995

94-780

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

Capitol Square Review and Advisory Board, Ronald T. Keller, Daniel Shellenbarger, and Ohio Senator Richard H. Finan,
Petitioners,

v.

Vincent J. Pinette, Donnie A. Carr, and Knights of the Ku Klux Klan,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 24, 1994
CERTIORARI GRANTED JANUARY 13, 1995

TABLE OF CONTENTS

PAGE

Relevant Court Docket Entries 1
United States District Court For The Southern District of Ohio - Eastern Division 1
United States Court of Appeals For The Sixth Circuit 7

Plaintiffs' Complaint (with exhibits). 20

Plaintiffs' Motion For Temporary Restraining Order And Preliminary Injunction 51

Affidavit of Rabbi Harold J. Berman (December 17, 1993) 53

Supplemental Exhibit 101 (Reprinted in appendix to brief in opposition to writ of certiorari ("brief in opp.") p. RA 23) 56

Supplemental Exhibit 102 (Reprinted in brief in opp. p. RA 24) 57

Supplemental Exhibit 103 (Reprinted in brief in opp. p. RA 28) 58

Supplemental Exhibit 104 59

Supplemental Exhibit 105 (Reprinted in brief in opp. p. RA 31) 60

Supplemental Exhibit 106 (Reprinted in brief in opp. p. RA 32) 61

Supplemental Exhibit 107 62

TABLE OF CONTENTS (Cont.)

PAGE

Supplemental Exhibit 108 63

Supplemental Exhibit 109 64

Supplemental Exhibit 110 65

Plaintiffs' Verified Amended Complaint
(with exhibits) 66

Stipulations of Fact in the District Court
(with exhibits) 94

Defendants' Exhibit C
(Reprinted in brief in opp. p. RA 17) 128

Defendants' Exhibit D
(Reprinted in brief in opp. p. RA 19) 129

Affidavit of Dr. Dennis Anderson
(December 20, 1993) 130

Excerpt of Proceedings Before
United States District Court Judge
James L. Graham (December 20, 1993) 134

Report And Recommendation of
Administrative Hearing Examiner
[Reprinted in appendix to petition for a writ
of certiorari ("petition") p. A27] 176

TABLE OF CONTENTS (Cont.)

PAGE

Opinion and Order of District Court
[Reprinted in petition p. A 13] 177

Judgment 178

Notice of Appeal 179

Excerpt of Proceedings Before
United States District Court Judge
James L. Graham (January 3, 1994) 181

Plaintiffs Exhibit 33
(Reprinted in brief in opp. p. RA 11) 191

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Proceedings include all events. TERMED
2:93cvl1162 Pinette, et al v. Capitol Sq Review Bd, et al
REFER

12/15/93 1 COMPLAINT (Summons issued) (referred to Mag. Judge Mark R. Abel) () (br)

12/15/93 2 ORDER by Judge James L. Graham; In-court hearing on the request for TRO & PI 9:00 12/20/93 Parties to file briefs by 12-17-93 at 3:00 pm. (cc: all counsel) (no pgs: 1) (br) [Entry date 12/16/93]

12/15/93 3 ORDER by Judge James L. Graham a hearing on the request for tro and pl is set for 12-20-93 at 9:00. (cc: all counsel) (no pgs: 1) (br) [Entry date 12/16/93]

12/17/93 4 MOTION by plaintiff for temporary restraining order and preliminary injunction ( ) (br)

12/17/93 5 AFFIDAVIT/Verification of Complaint by Vincent Pinette regarding complaint [1-1] ( ) (br)

12/17/93 6 RESPONSE by defendant to motion for temporary restraining order and preliminary injunction [4-1] ( ) (br)

12/17/93 7 STIPULATIONS of Fact between parties ( ) (br)

12/20/93 8 Verified AMENDED COMPLAINT by plaintiff ( ) (br)

12/20/93 9 CIVIL MINUTES: Proceeding before Judge James L. Graham on the motion for TRO and Prel INj. An order will issued after 9:00 a.m. on the 21 of December if the State of Ohio has not made a final decision on the application of the KKK to erect a cross at the State House for the holiday season. Pat Shaw and Joan Koenig reporting. (cc: all counsel) (no pgs: 1) (br) [Entry date 12/21/93]

12/20/93 10 Additional memorandum by defendant re: pending adm. hearing ( ) (br) [Entry date 12/21/93]

12/20/93 -- TRANSCRIPT filed by defendants of the 12-17-93 hearing before the hearing officer (br) [Entry date 12/21/93]

12/20/93 11 CERTIFICATE of Service by defendant ( ) (br) [Entry date 12/21/93]

12/20/93 12 Supplemental memorandum by defendant to motion for temporary restraining order and preliminary injunction [4-1] ( ) (br) [Entry date 12/21/93]

12/21/93 13 ORDER by Judge James L. Graham granting motion for temporary restraining order and preliminary injunction [4-1] allowing the pltf. to erect a cross on the State House grounds for the holiday season. (cc" all counsel) (no. pgs: 15) (br)

12/21/93 14 JUDGMENT ENTERED as to #13: (cc: all counsel) (no pgs: 2) (br)

Proceedings include all events. TERMED
2:93cv11162 Pinette, et al v. Capitol Sq Review Bd, et al
REFER

12/21/93 15 CIVIL MINUTES: Proceeding before Judge James L. Graham the Court heard discussion on the advisory board's decision from bothe sides. An order was issued, granting the tro and allowing a latin cross to be erected on the state house grounds. Joan Koenig reporting. (cc: all counsel) ( ) (br)

12/21/93 16 NOTICE OF APPEAL by defendant Capitol Sq Review Bd, defendant Ronald T. Keller, defendant Daniel Shellenbarger, defendant Richard H Finan from Dist. Court decision [13-1] of 12/21/93 (no pgs: 2) (sm)

12/21/93 -- APPEAL FEE pd in amount of $ 105.00 (Receipt # 122171) (sm)

12/21/93 -- APPEAL NOTIFICATION issued CA. (faxed to USCA) (sm)

12/21/93 17 ORDER by Judge James L. Graham In-court hearing on cts 2,3 and 4 of the complaint set on 1/3/93 at 9:00 a.m. (cc: all counsel) ( ) (br) [Entry date 12/22/93]

12/22/93 18 ORDER OF USCA 6th: The motion for a stay pending appeal is DENIED. (faxed via USCA). (no pgs: 2) (sm)

12/27/93 -- RECEIPT OF USCA APPEAL NUMBER - Number Assigned: 93-4367 (sm)

12/27/93 19 ORDER OF USCA 6th: the motion for a stay pending appeal is denied. (no pgs: 2) (sm)

12/27/93 20 CIVIL MINUTES: Proceeding before Judge James L. Graham hearing held on issues to be presented and discovery matters to be covered before the Jan 3, 1994 hearing. Chris Cook for the Ohio AG, Benson Wolman for plaintiffs. Court Reporter Pat Shaw. (cc: all counsel) (no pgs. 1) (br) [Entry date 12/28/93]

1/3/94 21 MOTION by intervenor Ohio Civil Rights Coalition to intervene ( ) (br)

1/3/94 22 MOTION by amicus curiae Columbus City of for leave to file brief amicus curiae ( ) (br)

1/3/94 23 CIVIL MINUTES: Proceeding before Judge James L. Graham hearing began on counts 2,3, and 4 of the pltf. complaint and granting the City of Cols. motion for leave to file brief amicus curiae [22-1], denying Oh Civil Rights Coalition motion to intervene [21-1], but allowing them to file a brief amicus curiae. Court Reporter Joan Koenig. (cc: all counsel) (no pgs: 1) (br)

1/3/94 24 BRIEF FILED by City of Columbus regarding motion for leave to file brief amicus curiae [22-1] ( ) (br)

Docket as of February 4, 1994 1:09 pm
Page 4

Proceedings include all events. TERMED
2:93cv11162 Pinette, et al v. Capitol Sq Review Bd, et al
REFER

1/3/93 25 RESPONSE by defendant in opposition to the motion for injunctive relief on counts 2,3 and 4 of the complaint ( ) (br)

1/3/94 -- TRANSCRIPT filed of the 12-20-93 proceedings (1 vol) (br)

1/3/94 -- Deposition of Thomas Robb (br)

1/4/94 26 MOTION by plaintiff for attorney fees (no pgs: 3) (br)

1/4/94 27 ORDER by Judge James L. Graham the defendants are ordered to grant a permit for the 1-15-94 rally, pltf. claim for money damages is dismissed with prejudice and the costs of this action are assessed against the defendants and this case is dismissed (cc: all counsel) (no pgs: 11) (br) [Entry date 01/05/94]

1/5/94 28 JUDGMENT ENTERED in favor of the plaintiffs: (cc: all counsel) ( ) (br)

1/18/94 29 SUPPLEMENTAL MOTION by plaintiff for attorney fees ( ) (br) [Entry date 01/19/94]

1/25/94 30 RESPONSE by defendant to motion for attorney fees [29-1], motion for attorney fees [26-1] ( ) (br) [Entry date 01/26/94]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GENERAL DOCKET
Sixth Circuit Court of Appeals

93-4367 93-4367

Court of Appeals Docket #: 93-4367
Filed: 12/21/93
Nsuit: 3440 Civil Rights: Other
Pinette, et al v. Capitol Sq Review Bd, et al

Appeal from: Southern District of Ohio at Columbus

Case Type information:

1) Civil
2) private
3) civil rights

Lower court information:

District: 0648-2 : 93-01162
Trial Judge: James L. Graham, District Judge
Date Filed: 12/15/93
Date order/judgment: 12/21/93
Date NOA filed: 12/21/93

Fee status: paid

Prior cases:
None
Current cases:
None

Docket as of January 23, 1995 12:12 PM Page 1

93-4367 Pinette, et al v. Capitol Sq Review Bd, et al

VINCENT J. PINETTE Plaintiff - Appellee	Benson A. Wolman 614-459-4140 [NTC ret] David Goldberger FTS 459-4503 614-459-4140 [COR NTC ret] Moots Cope & Stanton 3600 Olentangy River Road Building 501 Columbus, OH 43214-3441
DONNIE A. CARR Plaintiff - Appellee	Benson A. Wolman (See above) [NTC ret] David Goldberger (See above) [COR NTC ret]

KNIGHTS OF THE KU KLUX KLAN,
Ohio Realm

Plaintiff - Appellee

Benson A. Wolman
(See above)
[COR LD NTC ret]
David Goldberger
(See above)
[COR ret]

v.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

Defendant - Appellant

Andrew S. Bergman
614-466-2872
[COR NTC ret]
Office of the Attorney General
of Ohio
30 E. Broad Street
15th Floor State Office Tower
Columbus, OH 43215-3428

Andrew I. Sutter, Asst. Attorney Gen.
614-466-2872
[COR NTC gvt]

93-4367 Pinette, et al v. Capitol Sq Review Bd, et al

Richard A. Cordray
FTS 466-5087
614-539-1661

	[NTC ret] Office of the Attorney General of Ohio 30 E. Broad Street 17th Fl. State Office Tower Columbus, OH 43215-3428
RONALD T. KELLER - Defendant - Appellant	Andrew S. Bergman (See above) [COR NTC ret]
	Richard A. Cordray (See above) [NTC ret]
DANIEL SHELLENBARGER Defendant - Appellant	Andrew S. Bergman (See above) [COR NTC ret]
	Richard A. Cordray (See above) [NTC ret]
RICHARD H. FINAN, Senator Defendant - Appellant	Andrew S. Bergman (See above) [COR ret]
	Richard A. Cordray (See above) [COR LD NTC ret]

VINCENT J. PINETTE; DONNIE A. CARR; KNIGHTS OF THE KU KLUX KLAN, Ohio Realm

Plaintiffs - Appellees

v.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD; RONALD T. KELLER; DANIEL SHELLENBARGER; RICHARD H. FINAN, Senator

Defendants - Appellants

12/21/93	Civil Case Docketed. Notice filed by Appellant Capitol Sq Review Bd, Appellant Ronald T. Keller, Appellant Daniel Shellenbarger, Appellant Richard H. Finan. Transcript needed: y (nb)
12/22/93	Appellant MOTION filed for a stay of injunction pending appeal [878026-1], with memorandum in support attached

to the motion. Motion filed by Richard A. Cordray for Appellant Richard H. Finan, Appellant Daniel Shellenbarger, Appellant Ronald T. Keller, Appellant Capitol Sq Review Bd. Certificate of service date 12/22/93 [93-4367] (mmd)

12/22/93 Appellee RESPONSE in opposition filed regarding a motion for miscellaneous relief [878026-1]; previously filed by Richard A. Cordray. Response from Benson A. Wolman for Appellee Knights of KKK, Appellee Donie A. Carr, Appellee Vincent J. Pinette. Certificate of service date 12/22/93 [93-4367] (mmd)

12/22/93 ORDER filed denying motion for a stay pending appeal filed by Richard A. Cordray. {93-4367]. Cornelia G. Kennedy, Circuit Judge, David A. Nelson, Circuit Judge, Albert J. Engel, Senior Judge. (tmb)

12/22/93 LETTER SENT TO district court by tmb sending a certified copy of order filed 12/22/93. [93-4367] (tmb)

12/23/93 U.S. Supreme Court order filed deferring to the judgment of the Court of Appeals and denying the stay of an injunction entered by the district court and upheld by the Court of Appeals. Filed in the Supreme Court on

12/23/93. (bb)

1/5/94 — TRANSCRIPT ORDER FORM filed by Richard A. Cordray for Appellant Richard H. Finan, Appellant Daniel Shellenbarger, Appellant Ronald T. Keller, Appellant Capitol Sq Review Bd: Transcript on file in district court.
[93-4367] [884192-1]

1/5/94 — APPEARANCE filed by Attorneys C. Cook, A. Sutter, A. Bergman, and R. Cordray for Appellant Richard H. Finan, Appellant Daniel Shellenbarger, Appellant Ronald T. Keller, Appellant Capitol Sq Review Bd. [93-4367] (vf)

1/6/94 — PRE-ARGUMENT STATEMENT filed by Richard A. Cordray for Appellant Richard H. Finan, Appellant Daniel Shellenbarger, Appellant Ronald T. Keller, Appellant Capitol Sq Review Bd [93-4367] (vf)

1/7/94 — BRIEFING LETTER sent setting briefing schedule: appellant brief due 2/22/94; appellee brief due 3/28/94; appendix due 4/21/94 [93-4367]. (NB)

1/794	APPEARANCE filed by Attorneys D. Goldberger and B. Wolman for Appellee Knights of KKK, Appellee Donnie A. Carr, Appellee Vincent J. Pinette [93-4367] (vf)
1/25/94	Briefing Letter Sent by CONFERENCE ATTORNEY'S OFFICE resetting briefing schedule: appellant brief due now 2/8/94; appellee brief now due 3/14/94; appendix now due 3/28/94 [93-4367]. THIS IS AN EXPEDITED SCHEDULE AGREED TO BE COUNSEL. (trm)
2/1/94	Pre-Argument Conference work complete. (wjr)
2/15/94	BRIEF filed by Richard A. Cordray for Appellants Richard H. Finan, Daniel Shellenbarger, Ronald T. Keller, Capitol Sq Review Bd. Copies: 5. Certificate of service date 2/8/94 [93-4367] (teb)
2/15/94	Request to require oral argument filed by Richarad A. Cordray for Appellants Richard H. Finan, Daniel Shellenbarger, Ronald T. Keller, Capitol Sq. Reveiw Bd. [93-4367] (teb)
2/15/94	Appellant MOTION filed to expedite

	oral argument with memo in support. Motion filed by Richard A. Cordray for Appellant Richard H. Finan, Appellant Daniel Shellenbarger, Appellant Ronald T. Keller, Appellant Capitol Sq Review Bd. Certificate of service date 2/8/94 [93-4367] (mmd)
2/23/94	ORDER filed granting motion to expedite oral argument [904311-1] filed by Richard A. Cordray. The appeal shall be scheduled at the earliest practicable date. [93-4367] (tmb)
3/14/94	Appellee MOTION filed to extend time to file brief. Motion filed by Benson A. Wolman for Appellee Donnie A. Carr, Appellee Vincent J. Pinette, Appellee Knights of KKK. Certificate of service date 3/11/94. [93-4367] (mmd)
3/14/94	LETTER SENT by mmd granting motion to extend briefing [917127-1] filed by Benson A. Wolman [93-4367] resetting briefing schedule: appellee brief now due 3/21/94; appendix now due 4/11/94 [93-4367] (mmd)
3/22/94	BRIEF filed by Benson A. Wolman for Appellees Donnie A. Carr, Vincent J. Pinette, Knights of KKK. Copies: 10. Certificate of service date 3/21/94 [93-4367] (teb)

3/22/94	Request to require oral argument filed by Benson A. Wolman for Appellees Donnie A. Carr, Vincent J. Pinette, Knights of KKK [93-4367] (teb)

93-4367 Pinette, et al v. Capitol Sq Review Bd, et al

3/30/94	SUBSTITUTE BRIEF TENDERED. Received from Benson A. Wolman for Appellees Donnie A. Carr, Vincent J. Pinette, Knights of KKK. [93-4367] Copies: 10. Certificate of service date 3/21/94 Corrections to be made: motion pending for leave to file substitute brief. (teb)
3/30/94	Appellee MOTION filed to file substitute brief. Motion filed by Benson A. Wolman for Appellees Donnie A. Carr, Vincent J. Pinette, Knights of KKK. Certificate of service date 3/29/94. [93-4367] (teb)
3/30/94	BRIEF filed by Benson A. Wolman for Appellees Donnie A. Carr, Vincent J. Pinette, Knights of KKK. Copies: 10. Certificate of service date 3/21/94 [93-4367] (teb)

4/1/94	Oral argument date set for 6/21/94 in court room 836. Notice of argument sent to counsel. [93-4367] (paw)
4/6/94	REPLY BRIEF filed by Richard A. Cordray for Appellants Richard H. Finan, Daniel Shellenbarger, Ronald T. Keller, Capitol Sq Review Bd. Copies: 6. Certificate of service date 4/4/94 [93-4367] (teb)
4/8/94	Appellant MOTION filed to extend time to file appendix. Motion filed by Richard A. Cordray for Appellant Richard H. Finan, Appellant Daniel Shellenbarger, Appellant Ronald T. Keller, Appellant Capitol Sq Review Bd. Certificate of service date 4/7/94 [93-4367] (mmd)
4/13/94	LETTER SENT by mmd granting motion to extend time to file appendix [932543-1] filed by Richard A. Cordray [93-4367] per hearing panel on 4/11/94 resetting briefing schedule: appendix now due 4/15/94 [93-4367] (mmd)
4/13/94	CERTIFIED RECORD filed. Volumes include: 3 Tr; 2 Dep; 1 Pl. [93-4367] (hrm)
4/15/94	APPENDIX filed by Richard A. Cordray for Appellants. Copies: 5. Certificate of service date 4/14/94 [93-4367] (pje)

5/25/94	RULING granting motion to file substitute brief [927616-1] filed by Benson A. Wolman [93-4367] (LG/bb per hearing panel, 5/24/94; counsel notified by mail 5/25/94. (bb)
6/21/94	ADDITIONAL CITATION filed by Benson A. Wolman for Appellee Donnie A. Carr, Appellee Vincent J. Pinette, Appellee Knights of KKK. Certificate of service date 6/20/94 [93-4367] (mmd)

93-4367 Pinette, et al v. Capitol Sq Review Bd, et al

6/21/94	CLAUSE ARGUED on 6/21/94 by Richard A. Cordray for Appellant Richard H. Finan, Appellant Daniel Shellenbarger, Appellant Ronald T. Keller, Appellant Capitol Sq Review Bd, Benson A. Wolman for Appellee Donnie A. Carr, Appellee Vincent J. Pinette, Appellee Knights of KKK before Judges Jones, Ryan, Krupansky. [93-4367] (me)
7/25/94	OPINION filed: AFFIRMED; decision for publication pursuant to local rule 24 [93-4367]. Nathaniel R. Jones, Circuit Judge, James L. Ryan,

	Authoring Judge, Robert B. Krupansky, Senior Judge. (tmb)
7/25/94	JUDGEMENT: AFFIRMED. (tmb)
8/16/94	MANDATE ISSUED with no cost taxed [93-4367] (vf)
8/17/94	CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [93-4367]. Volumes included: 1 Pl; 3 Tr; 2 Dep;. (tt)
11/7/94	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Capitol Sq Review Bd. Filed in the Supreme Court on 10/24/94, Supreme Ct. case number: 94-780. [93-4367] (swh)
1/19/95	U.S. Supreme Court order filed granting petition for writ of certiorari [1040663-1] filed by Capitol Sq Review Bd., et al. [93-4367[[[[]. Filed in the Supreme Court on 1/13/95. (swh)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent J. Pinette P.O. Box 620007 Cleveland, Ohio 44102	:	
and	:	
Donnie A. Carr P.O. Box 28705 Columbus, Ohio 43228-0705	:	
and	:	
Knights of the Ku Klux Klan (Ohio Realm) P.O. Box 620007 Cleveland, Ohio 44102,	:	
Plaintiffs,	:	
v.	:	Case No. C2-93-1162
Capitol Square Review and Advisory Board The Statehouse Columbus, Ohio 43215	:	JUDGE GRAHAM
and	:	MAGISTRATE JUDGE ABEL
Ronald T. Keller, Daniel Shellenbarger, and Richard H. Finan,	:	

c/o The Statehouse :
Columbus, Ohio 43215, :
individually and in their
official capacities, :

Defendants. :

- -

COMPLAINT

I. Preliminary Statement

1. This is an action for declaratory and injunctive relief and for damages brought by members of the Ku Klux Klan because the Capitol Square Review and Advisory Board and its members and employees have rejected the application of the Plaintiffs to erect a free-standing, privately owned cross as part of the 1993 holiday display on the Statehouse grounds. In addition, the suit seeks to void a bill from public officials for security services related to a prior use of the Statehouse grounds and to require the Defendants to approve a permit to hold a January rally on Capitol Square. The action seeks declaratory and injunctive relief and damages for these deprivations and for a pattern of denial of rights of the Plaintiffs.

II. Jurisdiction

2. The claims for relief and causes of action alleged herein arise under 42 U.S.C.§ 1983, the First and Fourteenth Amendments and Article I, Section 10 of the Constitution of the United States.

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1331 and 1343, 42 U.S.C. Section 1983.

4. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 1983.

III. Venue

5. This action properly lies in the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1391(b), because the critical Defendants are found in this judicial district and all Defendants reside in this state and because a substantial part of the events or omissions, and all of the property, that are the subject of the action are located in Franklin County, Ohio.

IV. Parties

6. Plaintiff Vincent J. Pinette is the Chief Executive Officer of the Knights of the Ku Klux Klan (Ohio Realm); Plaintiff Donnie A. Carr is the Unit Coordinator for Columbus, Ohio of the Knights of the Ku Klux Klan (Ohio Realm); and, the Knights of the Ku Klux Klan (Ohio Realm) is an unincorporated association whose members reside in the State of Ohio.

7. Plaintiff Pinette resides in Cuyahoga County, Ohio; Plaintiff Carr resides in Franklin County, Ohio; and Plaintiff Knights of the Ku Klux Klan (Ohio Realm) is headquartered in Cuyahoga County, Ohio.

8. Defendant Capitol Square Review and Advisory Board is the state board chartered under Ohio Revised Code Section 123.022 that controls the land and facilities which comprise the Statehouse and its environs in downtown Columbus.

9. Defendant Keller is the Executive Director of

the Capitol Square Review and Advisory Board; Defendant Shellenbarger is the spokesperson for the board; and Defendant Finan, a state senator, is the chairperson of the board. They are sued in their official and personal capacities.

10. The Board is situated in Franklin County, Ohio; Defendants Keller and Shellenbarger reside in Franklin County, Ohio; and Defendant Finan resides in Hamilton County, Ohio.

11. The various acts and omissions alleged herein were engaged in and carried out by, between and among the individual Defendants acting personally and while said Defendants were employed by or acting for the State of Ohio. All of the actions alleged herein were engaged in and carried out by, between and among individual Defendants, under color of state law.

V. Facts

12. For more than a century, Capitol Square has been a traditional, public forum located in downtown Columbus. It is the seat of government of the State of Ohio. It is surrounded on all sides by streets and by public and private offices and business establishments and places of accommodation or amusement. Capitol Square traditionally has been used by office holders, office seekers, non-profit enterprises, commercial enterprises, and individuals for speeches, gatherings, and displays.

13. For many years during the period stretching from approximately Thanksgiving until the new year, Capitol Square has been adorned with festival lights and a Christmas tree. In recent years public authorities controlling Capitol

Square have granted the requested permit of the Lubavitcher sect of the Jewish faith to erect a free-standing Hanukkah menorah, a nine-branch candelabrum which is the primary visual symbol of the Jewish holiday of Hanukkah and which has both religious and secular significance.

14. During the course of the year private persons and organizations are regularly permitted to gather and to erect temporary structures on the Capitol Square pertaining to a variety of subjects, religious, commercial, political, social and secular.

15. In August 1993, the Plaintiffs and their associates applied for and were granted a permit to hold a rally at the Statehouse on October 23, 1993.

16. Plaintiffs and their associates peaceably engaged in their rally at that site on that date.

17. Many demonstrators, not all of whom were peaceable, gathered to protest the presence and message of the Plaintiffs.

18. Many officers of the State Highway Patrol, the Columbus Police Department and the Franklin County Sheriff's Department were deployed to protect the speakers from hostile demonstrators.

19. Following the event, local and state officials announced that they would send a bill for security services for the October rally to the Plaintiffs.

20. Following those announcements, Plaintiffs stated that if a bill was sent, they would seek to hold a rally on January 15, 1994 to protest the charges and discriminatory treatment by governmental officials.

21. A bill for $15,116.76 for security-related costs was sent to Plaintiffs by Defendant Capitol Square Review and Advisory Board on October 26, 1993. A copy of that bill is attached hereto as Exhibit 1. Plaintiffs are informed and believe that additional charges will be imposed.

22. Plaintiffs are informed and believe that, before and after the billing, state officials stated that no future permit should be granted until the bill was paid.

23. On October 29, 1993, Plaintiffs applied for a permit to use the Statehouse steps for a rally at which they expected up to 50 associates to attend. A copy of that application is attached as Exhibit 2.

24. As of the date of filing this action, the Defendants have refused to act on the permit application to hold the January 15, 1994 rally.

25. In November 1993, the board adopted a policy precluding all religious displays at the Statehouse with the stated reason that if it approved some, it would have to approve a display of a cross by the Ku Klux Klan.

26. Days later, after substantial public and political pressure, the board reversed its position and voted to allow certain forms of holiday and other displays.

27. Following that action, the board authorized a Christmas tree and a menorah to be erected. The state has permitted a Christmas tree and lights to be displayed this year since December 7. The state annually expends state resources in connection with holiday displays.

28. On November 29, 1993, the rabbi who heads the Lubavitcher congregation applied for, and on the same

day the state granted, permission to erect a Hanukkah menorah from December 8 through December 16, 1993. A copy of the application is attached hereto as Exhibit 3. The menorah is presently on display on the Statehouse grounds.

29. Also on November 29, 1993, the Plaintiffs in this action, through Plaintiff Carr, applied for a permit to place a cross on the Statehouse grounds from December 8, 1993 through December 24, 1993. A copy of that application is attached hereto as Exhibit 4.

30. The cross was to be approximately ten feet high, six feet across, made from 2 x 6 lumber, painted white, secured upright by a free-standing tripod, and would have been accompanied by a sign readily visible from a distance stating "This cross was erected by private individuals without government support for the purpose of expressing respect for the holiday season and to assert the right of all religious views to be expressed on an equal basis on public property" or words of similar import or as might otherwise be negotiated with the Defendants.

31. On December 3, 1993, Defendant Keller wrote, and on December 6, 1993 Mr. Carr received, a letter rejecting the Ku Klux Klan application to erect its cross. A copy of that letter is attached hereto and incorporated herein as Exhibit 5.

32. On December 9, 1993, counsel for the Plaintiffs met with counsel for the Defendants, and the Plaintiffs filed a Notice of Appeal and Request for an Expedited Hearing.

33. On December 10, 1993 the State sent, and on December 13, 1993 the Plaintiffs received, a letter waiving statutory time constraints and agreeing to an expedited

hearing.

34. To date, no hearing has been held and the denial stands.

Count One

35. By refusing to allow the Plaintiffs to erect their cross as part of the Capitol Square holiday display, the Defendants (a) have violated the guarantees of freedom of expression and free exercise of religion secured under the First and Fourteenth Amendments to the Constitution of the United States; (b) have deprived the Plaintiffs of the equal protection of the laws and due process of law secured under the Fourteenth Amendment to the Constitution of the United States; and (c) have engaged in conduct that constitutes a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

Count Two

36. By denying a Plaintiff a permit to hold a rally on January 15, 1994, the Defendants (a) have violated the guarantees of freedom of expression and assembly secured under the First and Fourteenth Amendments to the Constitution of the United States; (b) have deprived the Plaintiffs of the equal protection of the laws and due process of law secured under the Fourteenth Amendment to the Constitution of the United States; and (c) have engaged in conduct that constitutes a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

Count Three

37. By billing the Plaintiffs and refusing to retract the billing for security costs related to the rally, the Plaintiffs

for security costs related to the rally, Defendants (a) have chilled and violated the guarantees of freedom of expression and assembly secured under the First and Fourteenth Amendments to the Constitution of the United States; (b) have deprived the Plaintiffs of the equal protection of the laws and due process of law secured under the Fourteenth Amendment to the Constitution of the United States; and (c) have engaged in conduct that constitutes a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

Count Four

38. The conduct of the Defendants set forth above constitutes a continuing pattern of harassment and discriminatory conduct because of the political viewpoints of the Plaintiffs and (a) violates the free speech guarantees of the First and Fourteenth Amendments; (b) violates the equal protection of the laws and due process of the law guaranteed under the Fourteenth Amendment; and (c) is tantamount to a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

VI. Injury

51. The Plaintiffs have suffered and will continue to suffer irreparable injury by virtue of the Defendants' actions as described above, and the Plaintiffs are without an adequate legal remedy with which to address the aforementioned constitutional and other violations.

52. In addition, the plaintiffs have suffered injury by virtue of the conduct of the Defendants as described above, including personal expense and the necessary devotion of extraordinary time and attention by the Plaintiffs in order to secure their rights.

WHEREFORE, Plaintiffs request the following relief:

1. That a declaratory judgment issue, and a temporary retraining order, and preliminary and permanent injunctions be entered ordering the Defendants to permit the Plaintiffs to display their cross as a part of the 1993 holiday on Capitol Square.

2. That a declaratory judgment issue, and preliminary and permanent injunctions be entered directing the Defendants to permit the Plaintiffs to hold their January 15, 1994 rally.

3. That a declaratory judgment issue, and preliminary and permanent injunctions be entered voiding the billing for security services.

4. That the Plaintiffs be awarded damages in the amount of $1,000.00 for their expenditures and added time and attention necessary to secure their rights.

5. That the Plaintiffs be awarded their costs and attorneys' fees pursuant to 42 U.S.C. Section 1988.

6. That the Plaintiffs have such other relief as the court deems proper.

Respectfully submitted,

Benson A. Wolman
(0040123)
Trial Attorney
3600 Olentangy River Road,
Bldg. 501
Columbus, Ohio 43214-3913

(614) 459-4140
(614) 459-4503 (facsimile)

David Goldberger (0010292)
Of Counsel
3600 Olentangy River Road,
Bldg. 501
Columbus, Ohio 43214-3913
(614) 459-4140
(614) 459-4503 (facsimile)

Attorneys for Plaintiffs

Of Counsel
Kevin Francis O'Neill
American Civil Liberties Union
of Ohio Foundation
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 781-6278

COLUMBUS PUBLIC SCHOOLS

COLUMBUS BOARD OF EDUCATION
Columbus Public Schools*270 East State Street*
Columbus, Ohio 43215

December 9, 1993

Elizabeth Mayo
Porter, Wright, Morris & Arthur
41 S. High Street - 28th Floor
Columbus, OH 43215

Dear Ms. Mayo:

As a citizen and public official, I write to counsel each member of the Capitol Square Review and Advisory Board to deny the Ku Klux Klan's application to demonstrate on Statehouse grounds on the very day the nation honors the memory of Dr. Martin Luther King, Jr. The Klan is a scabrous assembly of gangsters, the unspeakable history of which constitutes a monstrous litany of crimes against humanity and the republic. By virtue of becoming a Klansman, every member, regardless of his personal actions, dips his hands in the blood unjustly shed by thousands of black women, children, and men, whose fearful sufferings and ghastly deaths will forever remain unrequited, both at law and by the standards of universal morality.

Any presumably noble appeal to the Klan's First Amendment rights cannot withstand principled scrutiny. Their very appearance before the seat of state government on a day of heightened emotional resonance is tantamount to maliciously shouting "Fire!" in a crowded theater. America's eminent jurists have long held that free speech

encounters its limits when good order and the common weal are immediately threatened.

There are times when passionate believers in the Constitution affirm that government does possess a transcendent right to prohibit malefactors from using the people's property and democratic symbols to promote evil. Denying the Klan's request is not only prudent, it is also in the best Constitutional tradition. If the Klan sues and if a court misguidedly awards it a favorable judgment, so be it! I, among many, would consider payment of damages a virtuous use of public funds if it prevented civic disorder and an affront to the community's sense of right and wrong.

Yours very truly for the cause that needs assistance,

Bill Moss
Member

Plaintiff's
Exhibit
1

INVOICE

OCTOBER 26, 1993

MICHAEL LOWE
P. O. BOX 2056
WACO TX 76703

CAPITOL SQUARE
REVIEW AND
ADVISORY BOARD

The Statehouse
Columbus, Ohio 43215
(614) 752-5209
FAX (614) 752-5209

DESCRIPTION OF SERVICES

Hon. Richard Finan
Chairman

PARKING GARAGE REVENUE LOSES $ 1,243.50

PROTECTIVE FENCING 9,179.00

Ronald T. Keller
Executive Director

LABOR COSTS - PLANNING, SETUP, TEARDOWN,

Christopher Cook
Assistant Attorney General
Legal Counsel

MATERIALS AND CLEANUP 4,694.26

TOTAL AMOUNT DUE: $15,116.76

TERMS: NET - 30 DAYS FROM INVOICE DATE

PLEASE MAKE CHECK PAYABLE TO:

CSRAB
OHIO STATEHOUSE
COLUMBUS, OH 43215

CC: VINCE PINETTE

Plaintiff's
Exhibit
2

Capitol Square Review & Advisory Board
Phone: 614/752-9777 Fax: 614-/7525208
Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date: _____

Capitol Square Review and Advisory Board exercises supervision and control of Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Knights of the Ku Klux Klan

Representative's name, address, phone #: Vince Pinette, P.O. Box [illegible] Cleve. Ohio 44102
216-631-0305

to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): Sat Jan 15 1994 2:00- 4:00 p.m.

Event time: 2:00 & 4:00 p.m. Portion of Capitol Square to be occupied: north steps

Approximate number of persons to attend: 50

Type of event: Rally

Use: The user organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to: Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause.
2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws. [NO PRICE ON FREE SPEECH]*
3. Bond Requirement: An optional bond may be required based on the nature of the event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit. C.S.R.A.B. has the discretion to waive this bond requirement.
4. Facility Protection: The user organization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.
5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.
6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.
7. Signs, Banners, Flags: The use of stickers or labels,

cellophane pressure sensitive tape, screws, nails, sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative condition of the Capitol buildings or any permanent structure on the premises be prohibited

8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be charged to the permit holder.
9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.
10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.
11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.
12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.
13. Liability: The user organization shall indemnify and

hold harmless the State of Ohio and C.S.R.A.B. against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

*HAND WRITTEN BY
APPLICANT

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

___ ACCEPTED

C.S.R.A.B. only _____ ___
DENIED

Fee: $20.00 refundable C . S . R . A . B .
REPRESENTATIVE
Paid: $20.00

I have read the above permit and agree to the terms and conditions therein

Date: 10-29-93
Check:

X_____
PERMIT APPLICANT

DATE 10-/29-93

PLAINTIFF'S
EXHIBIT 3

Capitol Square Review & Advisory Board
Phone: 614/752-9777 Fax: 614-/7525208

Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date: 11-29-93

Capitol Square Review and Advisory Board exercises supervision and control of Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Rabbi [illegible]

Representative's name, address, phone #: [illegible] to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): Dec. 8, 16, 93

Event time: N/A Portion of Capitol Square to be occupied: Grounds

Approximate number of persons to attend: N/A

Type of event: Seasonal Display

Use: The us organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to:

Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause..

2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws.

3. Bond Requirement: An optional bond may be required based on the [illegible] of the event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit. C.S.R.A.B. has the discretion to waive this bond requirement.

4. Facility Protection: The user organization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.

5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.

6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.

7. Signs, Banners, Flags: The use of stickers or labels, cellophane pressure sensitive tape, screws, nails, sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative

condition of the Capitol buildings or any permanent structure on the premises be prohibited

8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be charged to the permit holder.
9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.
10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.
11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.
12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.
13. Liability: The user organization shall indemnify and hold harmless the State of Ohio and C.S.R.A.B. against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or

persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

*HAND WRITTEN BY
APPLICANT

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

X ACCEPTED (RTK)

C.S.R.A.B. use only_____ —
DENIED

Fee: $20.00 C.S.R.A.B. REPRESENTATIVE
Paid: $20.00 I have read the above permit and agree to the terms and
Date: 11/29/93 conditions specified therein
Clerk: Cash

_____
PERMIT APPLICANT
DATE 11/29/93

PLAINTIFF'S
EXHIBIT 4

Capitol Square Review & Advisory Board
Phone: 614/752-9777 Fax: 614-/7525208
Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date:

Capitol Square Review and Advisory Board exercises supervision and control of
Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Knights of the Ku Klux Klan (Realm of Ohio)

Representative's name, address, phone #: Donnie A. Carr (216) 631-0305
P.O. Box 28705, Columbus, Ohio, 43228-0705
to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): 12-8-93

Event time: All day 24 hours Dec. 8 - 24, 1993 Portion of Capitol Square to be occupied: State House Lawn (Front)

Approximate number of persons to attend:

Type of event: Erect a Cross for Christmas

Use: The user organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to: Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause..
2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws. **[DOES NOT APPLY]***

3.X Bond Requirement: An optional bond may be required based on the nature event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit. C.S.R.A.B. has the discretion to waive this bond requirement.

4. Facility Protection: The userorganization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.

5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.

6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.

7. Signs, Banners, Flags: The use of stickers or labels, cellophane pressure sensitive tape, screws, nails, sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative condition of the Capitol buildings or any permanent structure on the premises be prohibited

8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be

charged to the permit holder.

9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.
10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.
11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.
12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.
13. Liability: The user organization shall indemnify and hold harmless the State of Ohio and C.S.R.A.B. against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

___ ACCEPTED

C.S.R.A.B. only _____ X DENIED
Fee: $20.00 nonrefundable C . S . R . A . B .
REPRESENTATIVE
Paid: $20.00 I have read the above permit and agree to the terms and conditions specified therein
Date: 1/29/93
Check: Cash

_____
PERMIT APPLICANT
DATE 11-29-93

HAND WRITTEN IN BY APPLICANT*

PLAINTIFF'S
EXHIBIT 5

CAPITOL SQUARE
REVIEW AND
ADVISORY BOARD

The Statehouse
Columbus, Ohio 43215
(614) 752-9777
FAX (614) 752-5209

Hon. Richard Finan
Chairman

Ronald T. Keller
Executive Director

Christopher Cook
Assistant Attorney
General
Legal Counsel

December 3, 1993

Donnie A. Carr
P.O. Box 28705
Columbus, Ohio 43220-0705

Dear Mr. Carr:

Pursuant to Ohio Administrative Code 128-4-02(B), the Capitol Square Review and Advisory Board hereby gives notice that it must deny your application to erect a cross on the Statehouse Grounds between December 8, 1993 and December 24, 1993. This decision was made upon the advice of counsel, in a good faith attempt to comply with the Ohio and United States Constitutions, as they have been interpreted in relevant decisions by the Federal and State Courts. We would direct your attention in particular to controlling decisions recently rendered by the United States Supreme Court under the First Amendment to the United States Constitution.

In addition, I assume you are aware that we placed a telephone call to you earlier this week, seeking more information about the precise nature of the display you were requesting the Board to approve. We have not yet heard from you in response to that call.

Pursuant to Chapter 119, Ohio Revised Code and 128-4-04 of the Ohio Administrative Code, you are hereby advised that you may request a hearing on this matter. If your wish to request such a hearing, that request must be made in writing and received by the Capitol Square Review and Advisory Board within thirty (30) days of the date of mailing of this notice. This notice was mailed on the date indicated above.

You are further advised that you are entitled to appear in person, or by your attorney, or both, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and ex.amine witnesses appearing for and against you.

In the event there is no request for such hearing received within thirty (30) days of the date of mailing of this notice, the Capitol Square Review and Advisory Board will consider this matter closed.

Donnie A. Carr
December 3, 1993
Page Two

Section 119.07, Ohio Revised Code, in part states:

> "Whenever a party requests a hearing in accordance with this section and Section 119.06 of the Ohio Revised Code, the agency shall immediately set the date, time, and place for such hearing and forthwith notify the party thereof. The date set for such hearing shall be within fifteen (15) days, but no earlier than seven (7) days, after the party has requested a hearing, unless otherwise agreed to by the agency and the party."

Sincerely,

RON KELLER
Executive Director

Capitol Square Review and
Advisory Board

Registered Mail
Return Receipt Requested

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent J. Pinette, et al.	:	
Plaintiffs,	:	Case No. C2-93-1162
v.	:	Judge Graham
Capitol Square Review and Advisory Board, et al.	:	Magistrate Judge Abel
Defendants.		

VERIFICATION OF COMPLAINT

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

I, Vincent J. Pinette, hereby assert that I have read the Complaint in this action and that the information set forth therein Is true to the best of my knowledge and belief.

_____
Vincent J. Pinette

Sworn to me and signed via facsimile on this 17th day of December, 1993.

_____
Notary Public

Benson A. Wolman,
Attorney-at-Law
Notary Public - State of Ohio
My commission has no
expiration date.
Section 147.03 R.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent J. Pinette, et al.	:	
Plaintiffs,	:	Case No. C2-93-1162
v.	:	Judge Graham
Capitol Square Review and Advisory Board, et al.	:	Magistrate Judge Abel
Defendants.	:	

- -

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs move this Court for a temporary restraining order and a preliminary injunction directing the Defendants to issue to the Plaintiffs the permit for the use of Capitol Square as filed on November 29, 1993 and as more fully elaborated upon, for the reasons set forth in the accompanying memorandum and incorporated herein.

Plaintiffs request that the security for this injunction be set at a minimal rate of $50.00.

Respectfully submitted,

Benson A. Wolman
(0040123)
Trial Attorney
3600 Olentangy River Road,
Bldg. 501
Columbus, Ohio 43214-3913
(614) 459-4140
(614) 459-4503 (facsimile)

David Goldberger (0010292)
of Counsel
3600 Olentangy River Road,
Bldg. 501
Columbus, Ohio 43214-3913
(614) 459-4140
(614) 459-4503 (facsimile)

Attorneys for Plaintiffs

Of Counsel
Kevin Francis O'Neill
American Civil Liberties Union
of Ohio Foundation
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 781-6278

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent J. Pinette, et al.,	:	
Plaintiffs,	:	Case No. C2-93-1162
v.	:	Judge Graham
Capitol Square Review and Advisory Board, et al.,	:	Magistrate Judge Abel
Defendants.	:	

- -

AFFIDAVIT

STATE OF OHIO
COUNTY OF FRANKLIN SS:

Affiant, Rabbi Harold J. Berman, being duly sworn on oath, states as follows:

I have been asked to comment on the question of whether the Hanukkiyah, more commonly known as a Hanukkah Menorah, is a religious symbol... I believe that even the most superficial view of Jewish tradition suggests that it is and that any claim to the contrary is unjustified.

The lighting of Hanukkah lights is mentioned with considerable detail in the Talmud, with a number of questions as to the number of lights to be lit on the days of Hanukkah and the religious obligation to set the lights in a

public place and refrain from using the light for any secular purpose. A jew is obligated to light the lights on each night of Hanukkah and is obligated to say the blessing which contains the words, "Praised are you, Lord our God, ruler of the universe, who made us holy by His commandments and commanded us to light the lights of Hanukkah."

In every generation, wherever Jews lived, they designed Hanukkah lamps, "Menorahs," with which to fill the commandment and light the lights. These were obviously considered to be ritual objects and they often adorned the synagogue in some way on a permanent basis. Traditionally the Menorah is lit in the synagogue as part of religious services each evening during Hanukkah in addition to being lit at home by the family. It is possible to say that the Menorah is a secular symbol only in the sense that any religious symbol conveys a message and the message can, nearly always, be presented in a secular light. Nonetheless, the reason Jews light the Menorah is because it is a commandment of Jewish tradition, to be lit at home and in the synagogue to the accompaniment of blessings before God. After it is lit, it is customary to place it in a public place (such as the window of one's home, or even outside next to the door of one's home) in order to, "publicize God's miracle." It is impossible, however, in the context of Jewish tradition, to separate the Menorah from the ritual with which we light it and the blessings that accompany it. To Jews it has been the religious symbol of the holiday Hanukkah since our very earliest days and to claim otherwise is to take away from the holiday the most precious religious symbol it offers us.

I hope this has been helpful. I would be pleased to offer additional information upon request.

Further Affiant Sayeth Naught,

Harold J. Berman

Sworn to before me and signed in my presence, a Notary Public in and for said State and County, on this 17th day of December, 1993.

Notary Public

Benson A. Wolman,
Attorney-At-Law
Notary Public - State of Ohio
My commission has no
expiration date
Section 147.03 R.C.

SUPPLEMENTAL EXHIBIT 101

[Reprinted in appendix to brief in opposition to writ of certiorari p. RA 23]

SUPPLEMENTAL EXHIBIT 102
[Reprinted in brief in opposition to writ of certiorari p. RA 24]

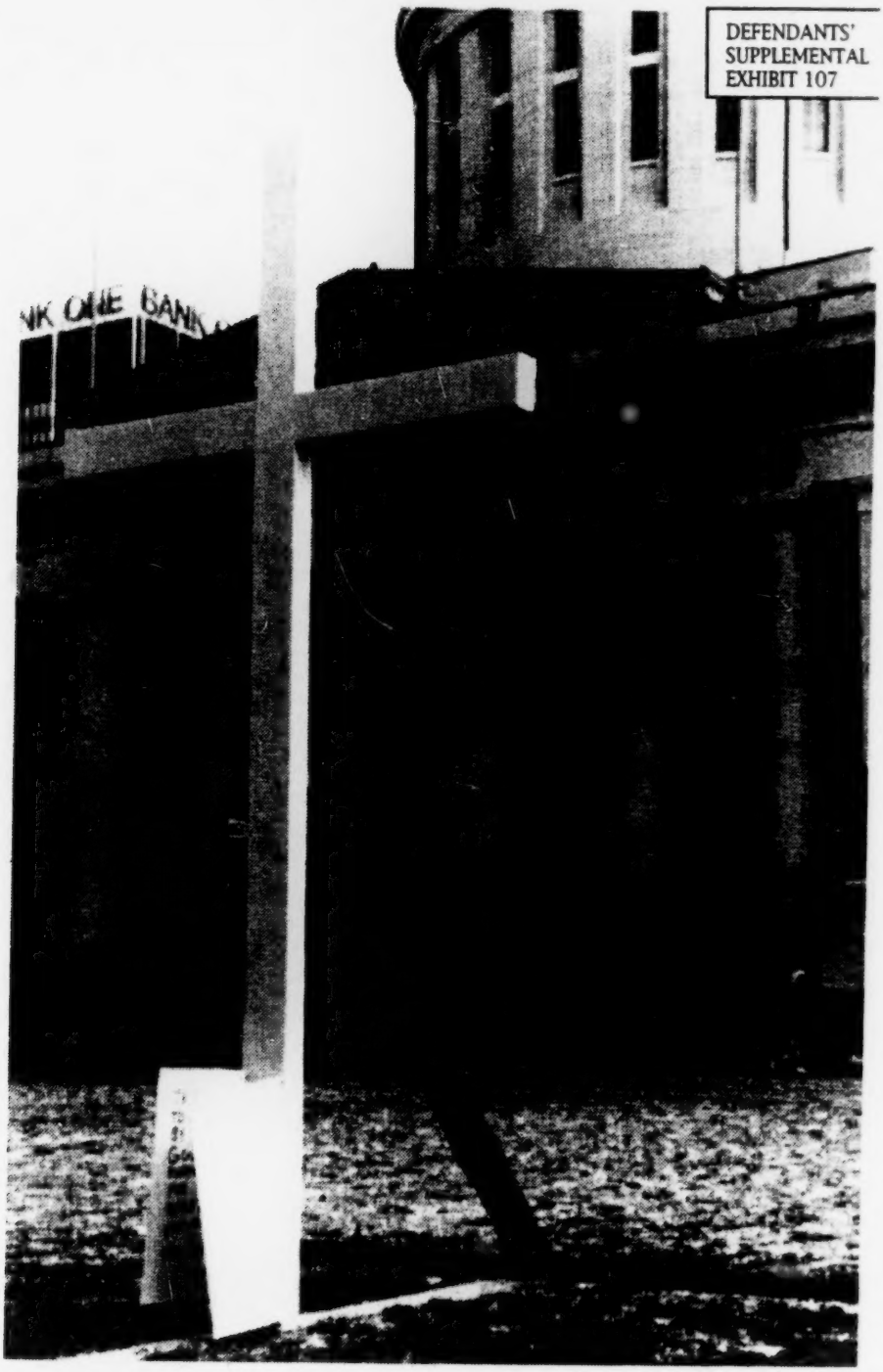
SUPPLEMENTAL EXHIBIT 103
[Reprinted in brief in opposition to writ of certiorari p. RA 28]

SUPPLEMENTAL EXHIBIT 104

SUPPLEMENTAL EXHIBIT 105
[Reprinted in brief in opposition to writ of certiorari p. RA 31]

SUPPLEMENTAL EXHIBIT 106
[Reprinted in brief in opposition to writ of certiorari p. RA 32]

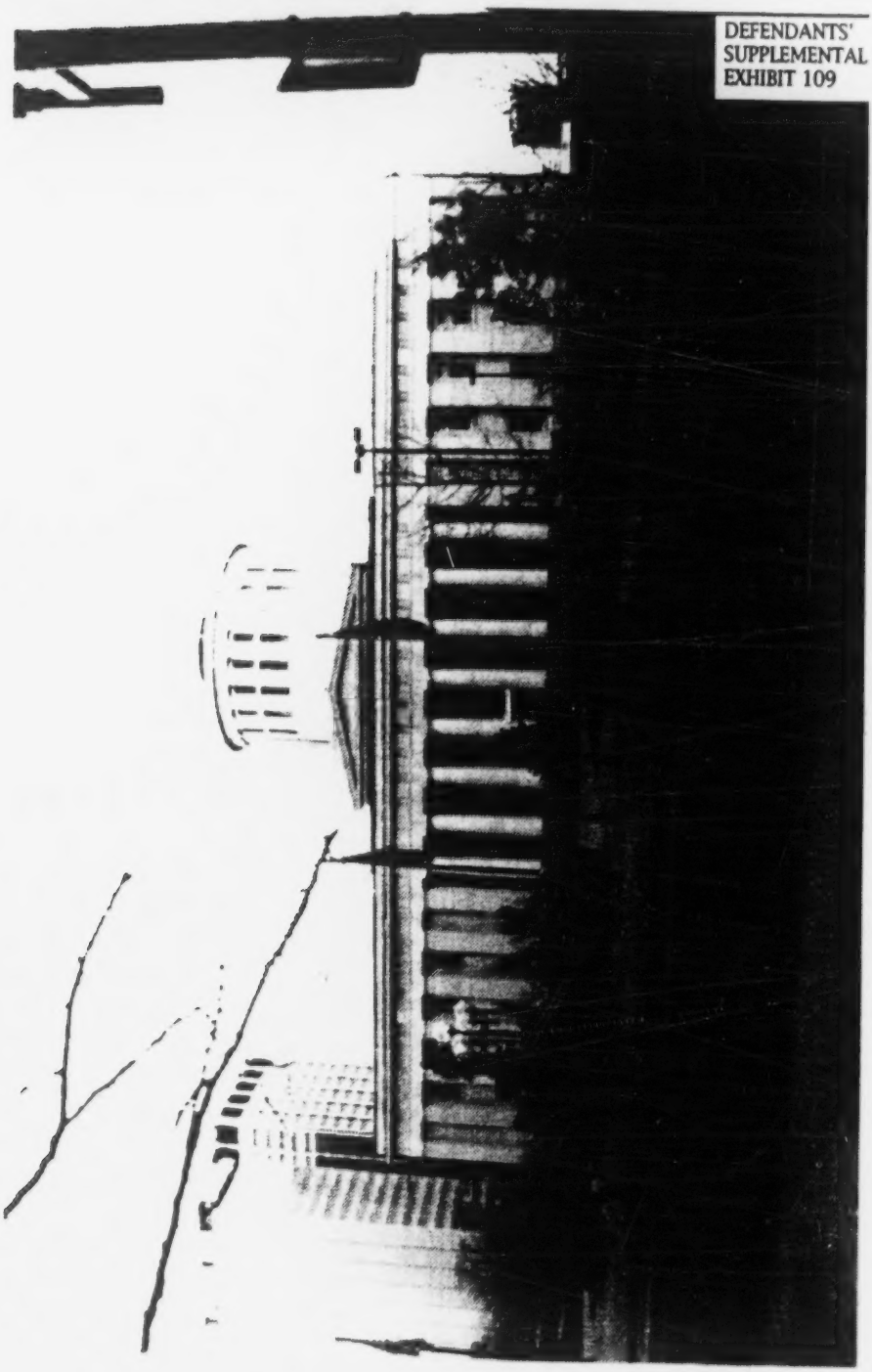
SUPPLEMENTAL EXHIBIT 107



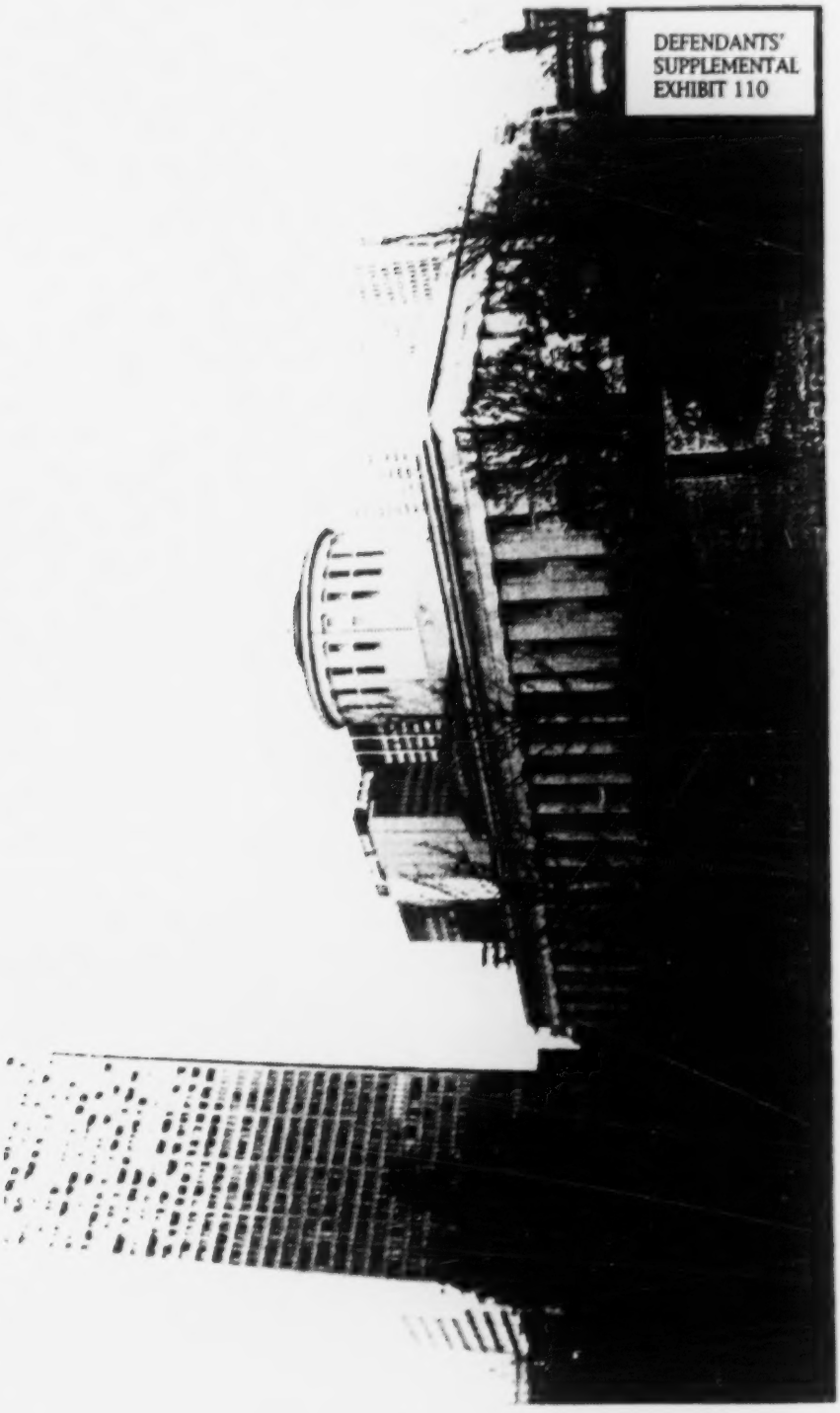
SUPPLEMENTAL EXHIBIT 108

DEFENDANTS' SUPPLEMENTAL EXHIBIT 108

SUPPLEMENTAL EXHIBIT 109



SUPPLEMENTAL EXHIBIT 110



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent J. Pinette P.O. Box 620007 Cleveland, Ohio 44102	:	
and	:	
Dennis A. Carr P.O. Box 28705 Columbus, Ohio 43228-0705	:	
and	:	
Knights of the Ku Klux Klan (Ohio Realm) P.O. Box 620007 Cleveland, Ohio 44102,	:	
Plaintiffs,	:	
v.	:	Case No. C2-93-1162
Capitol Square Review and Advisory Board The Statehouse Columbus, Ohio 43215	:	JUDGE GRAHAM
and	:	MAGISTRATEJUDGE ABEL
Ronald T. Keller, Daniel Shellenbarger, and Richard H. Finan,	:	

c/o The Statehouse
Columbus, Ohio 43215 :
individually and in their
official capacities, :

Defendants. :

- -

VERIFIED & AMENDED COMPLAINT

I. Preliminary Statement

1. This is an action for declaratory and injunctive relief and for damages brought by members of the Ku Klux Klan because the Capitol Square Review and Advisory Board and its members and employees have rejected the application of the Plaintiffs to erect a free-standing, privately owned cross on the Statehouse grounds. In addition, the suit seeks to void a bill from public officials for security services related to prior use of the Statehouse grounds and to require the Defendants to approve a permit to hold a January rally on Capitol Square. The action seeks declaratory and injunctive relief and damages for these deprivations and for a pattern of denial of rights of the plaintiffs.

II. Jurisdiction

2. The claims for relief and causes of action alleged herein arise under 42 U.S.C.§ 1983, the First and Fourteenth Amendments and Article I, Section 10 of the Constitution of the United States.

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1331 and 1343, 42 U.S.C. Section 1983.

4. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 1983.

III. Venue

5. This action properly lies in the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1391(b), because the critical Defendants are found in this judicial district and all Defendants reside in this state and because a substantial part of the events or omissions, and all of the property, that are the subject of the action are located in Franklin County, Ohio.

IV. Parties

6. Plaintiff Vincent J. Pinette is the Chief Executive Officer of the Knights of the Ku Klux Klan (Ohio Realm); Plaintiff Donnie A. Carr is the Unit Coordinator for Columbus, Ohio of the Knights of the Ku Klux Klan (Ohio Realm); and, the Knights of the Ku Klux Klan (Ohio Realm) is an unincorporated association whose members reside in the State of Ohio.

7. Plaintiff Pinette resides in Cuyahoga County, Ohio; Plaintiff Carr resides in Franklin County, Ohio; and Plaintiff Knights of the Ku Klux Klan (Ohio Realm) is headquartered in Cuyahoga County, Ohio.

8. Defendant Capitol Square Review and Advisory Board is the state board chartered under Ohio Revised Code Section 123.022 that controls the land and facilities which comprise the Statehouse and its environs in downtown Columbus.

9. Defendant Keller is the Executive Director of

the Capitol Square Review and Advisory Board; Defendant Shellenbarger is the spokesperson for the board; and Defendant Finan, a state senator, is the chairperson of the board. They are sued in their official and personal capacities.

10. The Board is situated in Franklin County, Ohio; Defendants Keller and Shellenbarger reside in Franklin County, Ohio; and Defendant Finan resides in Hamilton County, Ohio.

11. The various acts and omissions alleged herein were engaged in and carried out by, between and among the individual Defendants acting personally and while said Defendants were employed by or acting for the State of Ohio. All of the actions alleged herein were engaged in and carried out by, between and among individual Defendants, under color of state law.

V. Facts

12. For more than a century, Capitol Square has been a traditional, public forum located in downtown Columbus. It is the seat of government of the State of Ohio. It is surrounded on all sides by streets and by public and private offices and business establishments and places of accommodation or amusement. Capitol Square traditionally has been used by office holders, office seekers, non-profit enterprises, commercial enterprises, and individuals for speeches, gatherings, and displays.

13. For many years during the period stretching from approximately Thanksgiving until the new year, Capitol Square has been adorned with festival lights and a Christmas tree. In recent years public authorities controlling Capitol Square have granted the requested permit of the Lubavitcher

sect of the Jewish faith to erect a free-standing Hanukkah menorah, a nine-branch candelabrum which is the primary visual symbol of the Jewish holiday of Hanukkah and which has both religious and secular significance.

14. During the course of the year private persons and organizations are regularly permitted to gather and to erect temporary structures on the Capitol Square pertaining to a variety of subjects, religious, commercial, political, social and secular.

15. In August 1993, the Plaintiffs and their associates applied for and were granted a permit to hold a rally at the Statehouse on October 23, 1993.

16. Plaintiffs and their associates peaceably engaged in their rally at that site on that date.

17. Many demonstrators, not all of whom were peaceable, gathered to protest the presence and message of the Plaintiffs.

18. Many officers of the State Highway Patrol, the Columbus Police Department and the Franklin County Sheriff's Department were deployed to protect the speakers from hostile demonstrators.

19. Following the event, local and state officials announced that they would send a bill for security services for the October rally to the Plaintiffs.

20. Following those announcements, Plaintiffs stated that if a b ill was sent, they would seek to hold a rally on January 15, 1994 to protest the charges and discriminatory treatment by governmental officials.

21. A bill for $15,116.76 for security-related costs

was sent to Plaintiffs by Defendant Capitol Square Review and Advisory Board on October 26, 1993. A copy of that bill is attached hereto as Exhibit 1. Plaintiffs are informed and believe that additional charges will be imposed.

22. Plaintiffs are informed and believe that, before and after the billing, state officials stated that no future permit should be granted until the bill was paid.

23. On October 29, 1993, Plaintiffs applied for a permit to use the Statehouse steps for a rally at which they expected up to 50 associates to attend. A copy of that application is attached as Exhibit 2.

24. As of the date of filing this action, the Defendants have refused to act on the permit application to hold the January 15, 1994 rally.

25. In November 1993, the board adopted a policy precluding all religious displays at the Statehouse with the stated reason that if it approved some, it would have to approve a display of a cross by the Ku Klux Klan.

26. Days later, after substantial public and political pressure, the board reversed its position and voted to allow certain forms of holiday and other displays.

27. Following that action, the board authorized a Christmas tree and a menorah to be erected. The state has permitted a Christmas tree and lights to be displayed this year since December 7. The state annually expends state resources in connection with holiday displays.

28. On November 29, 1993, the rabbi who heads the Lubavitcher congregation applied for, and on the same day the state granted, permission to erect a Hanukkah

menorah from December 8 through December 16, 1993. A copy of the application is attached hereto as Exhibit 3. The menorah was on display on the Statehouse grounds from December 8 through December 16, 1993.

29. Also on November 29, 1993, the Plaintiffs in this action, through Plaintiff Carr, applied for a permit to place a cross on the Statehouse grounds from December 8, 1993 through December 24, 1993. A copy of that application is attached hereto as Exhibit 4.

30. The cross was to be approximately ten feet high, six feet across, made from 2 x 6 lumber, painted white, secured upright by free-standing tripod, and would have been accompanied by a sign readily visible from a distance stating "This cross was erected by private individuals without government support for the purpose of expressing respect for the holiday season and to assert the right of all religious views to be expressed on an equal basis on public property" or words of similar import or as might otherwise be negotiated with the Defendants.

31. On December 3, 1993, Defendant Keller wrote, and on December 6, 1993 Mr. Carr received, a letter rejecting the Ku Klux Klan application to erect its cross. A copy of that letter is attached hereto and incorporated herein as Exhibit 5.

32. On December 9, 1993, counsel for the Plaintiffs met with counsel for the Defendants, and the Plaintiffs filed a Notice of Appeal and Request for an Expedited Hearing.

33. On December 10, 1993 the State sent, and on December 13, 1993 the Plaintiffs received, a letter waiving statutory time constraints and agreeing to an expedited

hearing.

34. To date, no hearing has been held and the denial stands.

Count One

35. By refusing to allow the Plaintiffs to erect their cross on Capitol Square, the Defendants (a) have violated the guarantees of freedom of expression and free exercise of religion secured under the First and Fourteenth Amendments to the Constitution of the United States; (b) have deprived the Plaintiffs of the equal protection of the laws and due process of law secured under the Fourteenth Amendment to the Constitution of the United States; and (c) have engaged in conduct that constitutes a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

Count Two

36. By denying a Plaintiff a permit to hold a rally on January 15, 1994, the Defendants (a) have violated the guarantees of freedom of expression and assembly secured under the First and Fourteenth Amendments to the Constitution of the United States; (b) have deprived the Plaintiffs of the equal protection of the laws and due process of law secured under the Fourteenth Amendment to the Constitution of the United States; and (c) have engaged in conduct that constitutes a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

Count Three

37. By billing the Plaintiffs and refusing to retract the billing for security costs related to the rally, the Plaintiffs

for security costs related to the rally, Defendants (a) have chilled and violated the guarantees of freedom of expression and assembly secured under the First and Fourteenth Amendments to the Constitution of the United States; (b) have deprived the Plaintiffs of the equal protection of the laws and due process of law secured under the Fourteenth Amendment to the Constitution of the United States; and (c) have engaged in conduct that constitutes a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

Count Four

38. The conduct of the Defendants set forth above constitutes a continuing pattern of harassment and discriminatory conduct because of the political viewpoints of the Plaintiffs and (a) violates the free speech guarantees of the First and Fourteenth Amendments; (b) violates the equal protection of the laws and due process of the law guaranteed under the Fourteenth Amendment; and (c) is tantamount to a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States.

VI. Injury

51. The Plaintiffs have suffered and will continue to suffer irreparable injury by virtue of the Defendants' actions as described above, and the Plaintiffs are without an adequate legal remedy with which to address the aforementioned constitutional and other violations.

52. In addition, the plaintiffs have suffered injury by virtue of the conduct of the Defendants as described above, including personal expense and the necessary devotion of extraordinary time and attention by the Plaintiffs in order to secure their rights.

WHEREFORE, Plaintiffs request the following relief:

1. That a declaratory judgment issue, and a temporary retraining order, and preliminary and permanent injunctions be entered ordering the Defendants to permit the Plaintiffs to display their cross on Capitol Square.

2. That a declaratory judgment issue, and preliminary and permanent injunctions be entered directing the Defendants to permit the Plaintiffs to hold their January 15, 1994 rally.

3. That a declaratory judgment issue, and preliminary and permanent injunctions be entered voiding the billing for security services.

4. That the Plaintiffs be awarded damages in the amount of $1,000.00 for their expenditures and added time and attention necessary to secure their rights.

5. That the Plaintiffs be awarded their costs and attorneys' fees pursuant to 42 U.S.,C. Section 1988.

6. That the Plaintiffs have such other relief as the court deems proper.

Respectfully submitted,

Benson A. Wolman
(0040123)
Trial Attorney
3600 Olentangy River Road,
Bldg. 501
Columbus, Ohio 43214-3913

(614) 459-4140
(614) 459-4503 (facsimile)

David Goldberger (0010292)
Of Counsel
3600 Olentangy River Road,
Bldg. 501
Columbus, Ohio 43214-3913
(614) 459-4140
(614) 459-4503 (facsimile)

Attorneys for Plaintiffs

Of Counsel
Kevin Francis O'Neill
American Civil Liberties Union
of Ohio Foundation
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 781-6278

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent J. Pinette, et al.,	:	
Plaintiffs,	:	Case No. C2-93-1162
v.	:	Judge Graham

Capitol Square Review and Advisory Board. et al. : Magistrate Judge Abel

Defendants.

VERIFICATION OF COMPLAINT

STATE OF OHIO)
) SS:
county of cuyahoga)

I, Vincent J. Pinette, hereby assert that I have read the Complaint in this action and that the information set forth therein is true to the best of my knowledge and belief.

_____
Vincent J. Pinette

Sworn to me and signed via facsimile on this 17th day of December, 1993.

_____
Notary Public
Benson A. Wolman,
Attorney-at-Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R.C.

Plaintiff's Exhibit 1

INVOICE

OCTOBER 26, 1993

MICHAEL LOWE
P. O. BOX 2056
WACO TX 76703

CAPITOL SQUARE
REVIEW AND
ADVISORY BOARD

The Statehouse
Columbus, Ohio 43215
(614) 752-5209
FAX (614) 752-5209

Hon. Richard Finan
Chairman

Ronald T. Keller.
Executive Director

Christopher Cook
Assistant Attorney General
Legal Counsel

DESCRIPTION OF SERVICES

PARKING GARAGE REVENUE LOSES	$ 1,243.50
PROTECTIVE FENCING	9,179.00
LABOR COSTS - PLANNING, SETUP, TEARDOWN, MATERIALS AND CLEANUP	4,694.26
TOTAL AMOUNT DUE:	$15,116.76

TERMS: NET - 30 DAYS FROM INVOICE DATE

PLEASE MAKE CHECK PAYABLE TO:

CSRAB
OHIO STATEHOUSE
COLUMBUS, OH 43215

CC: VINCE PINETTE

PLAINTIFF'S
EXHIBIT 2

Capitol Square Review & Advisory Board
Phone: 614/752-9777 Fax: 614-/7525208
Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date: _____

Capitol Square Review and Advisory Board exercises supervision and control of Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Knights of the Ku Klux Klan

Representative's name, address, phone #: Vince Pinette, P.O. Box [ineligible] Cleve. Ohio 44102
216-631-0305
to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): Sat Jan 15 1994 2:00 - 4:00 p.m.

Event time: 2:00 & 4:00 p.m. Portion of Capitol Square to be occupied: north steps

Approximate number of persons to attend: 50

Type of event: Rally

Use: The user organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to: Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause.
2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws. [NO PRICE ON FREE SPEECH]*
3. Bond Requirement: An optional bond may be required based on the nature of the event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit. C.S.R.A.B. has the discretion to waive this bond requirement.
4. Facility Protection: The user organization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.
5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of

the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.

6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.
7. Signs, Banners, Flags: The use of stickers or labels, cellophane pressure sensitive tape, screws, nails, sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative condition of the Capitol buildings or any permanent structure on the premises be prohibited
8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be charged to the permit holder.
9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.
10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.
11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.

12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.

13. Liability: The user organization shall indemnify and hold harmless the State of Ohio and C.S.R.A.B. against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

*HAND WRITTEN IN BY
APPLICANT

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

C.S.R.A.B. only ___ ACCEPTED
Fee: $20.00 refundable _____ __ DENIED
Paid: $20.00 C.S.R.A.B. REPRESENTATIVE

I have read the above permit and agree to the terms and conditions specified therein

Date: 10/29/93
Check:

X_____
PERMIT APPLICANT

DATE 10-29-93

PLAINTIFF'S

Capitol Square Review & Advisory Board EXHIBIT 3
Phone: 614/752-9777 Fax: 614-/7525208
Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date: 11-29-93

Capitol Square Review and Advisory Board exercises supervision and control of Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Rabbi [illegible]

Representative's name, address, phone #: [illegible] to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): Dec. 8, 16, 93

Event time: N/A Portion of Capitol Square to be occupied: Grounds

Approximate number of persons to attend: N/A

Type of event: Seasonal Display

Use: The user organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to: Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause..
2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws.
3. Bond Requirement: An optional bond may be required based on the [illegible] of the event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit. C.S.R.A.B. has the discretion to waive this bond requirement.
4. Facility Protection: The user organization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.
5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.
6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.
7. Signs, Banners, Flags: The use of stickers or labels, cellophane pressure sensitive tape, screws, nails,

sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative condition of the Capitol buildings or any permanent structure on the premises be prohibited

8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be charged to the permit holder.
9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.
10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.
11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.
12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.
13. Liability: The user organization shall indemnify and hold harmless the State of Ohio and C.S.R.A.B.

against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

X ACCEPTED (RTK)

C.S.R.A.B. use only_____ __ DENIED

Fee: $20.00 C.S.R.A.B. REPRESENTATIVE

Paid: $20.00 I have read the above permit and agree to the terms and conditions specified

Date: 11/29/93 therein

Clerk: Cash

_____

PERMIT APPLICANT

DATE 11/29/93

PLAINTIFF'S EXHIBIT 4

Capitol Square Review & Advisory Board
Phone: 614/752-9777 Fax: 614-/7525208
Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date:

Capitol Square Review and Advisory Board exercises supervision and control of Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Knights of the Ku Klux Klan (Realm of Ohio)

Representative's name, address, phone #: Donnie A. Carr (216) 631-0305
P.O. Box 28705, Columbus, Ohio, 43228-0705
to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): 12-8-93

Event time: All day 24 hours Dec. 8 - 24, 1993 Portion of Capitol Square to be occupied: State House Lawn (Front)

Approximate number of persons to attend:

Type of event: Erect a Cross for Christmas

Use: The user organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to: Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause.
2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws. (DOES NOT APPLY)

3.X Bond Requirement: An optional bond may be required based on the nature of the event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit. C.S.R.A.B. has the discretion to waive this bond requirement.

4. Facility Protection: The user organization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.

5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.

6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.

7. Signs, Banners, Flags: The use of stickers or labels, cellophane pressure sensitive tape, screws, nails, sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative condition of the Capitol buildings or any permanent structure on the premises be prohibited

8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be

charged to the permit holder.

9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.

10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.

11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.

12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.

13. Liability: The user organization shall indemnify and hold harmless the State of Ohio and C.S.R.A.B. against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

C.S.R.A.B. only_____ ACCEPTED __ DENIED X

Fee: $20.00 nonrefundable C.S.R.A.B. REPRESENTATIVE

Paid: $20.00

Date: 1/29/93

I have read the above permit and agree to the terms and conditions specified therein

Check: Cash

_____

PERMIT APPLICANT[illegible]

DATE 11-29-93

PLAINTIFF'S
EXHIBIT 5

CAPITOL SQUARE
REVIEW AND
ADVISORY BOARD
The Statehouse
Columbus, Ohio 43215
(614) 752-9777
FAX (614) 752-5209

Hon. Richard Finan
Chairman

Ronald T. Keller
Executive Director

Christopher Cook
Assistant Attorney
General
Legal Counsel

December 3, 1993

Donnie A. Carr
P.O. Box 28705
Columbus, Ohio 43220-0705

Dear Mr. Carr:

Pursuant to Ohio Administrative Code 128-4-02(B), the Capitol Square Review and Advisory Board hereby gives notice that it must deny your application to erect a cross on the Statehouse Grounds between December 8, 1993 and December 24, 1993. This decision was made upon the

advice of counsel, in a good faith attempt to comply with the Ohio and United States Constitutions, as they have been interpreted in relevant decisions by the Federal and State Courts. We would direct your attention in particular to controlling decisions recently rendered by the United States Supreme Court under the First Amendment to the United States Constitution.

In addition, I assume you are aware that we placed a telephone call to you earlier this week, seeking more information about the precise nature of the display you were requesting the Board to approve. We have not yet heard from you in response to that call.

Pursuant to Chapter 119, Ohio Revised Code and 128-4-04 of the Ohio Administrative Code, you are hereby advised that you may request a hearing on this matter. If your wish to request such a hearing, that request must be made in writing and received by the Capitol Square Review and Advisory Board within thirty (30) days of the date of mailing of this notice. This notice was mailed on the date indicated above.

You are further advised that you are entitled to appear in person, or by your attorney, or both, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for and against you.

In the event there is no request for such hearing

received within thirty (30) days of the date of mailing of this notice, the Capitol Square Review and Advisory Board will consider this matter closed.

Section 119.07, Ohio Revised Code, in part states:

> "Whenever a party requests a hearing in accordance with this section and Section 119.06 of the Ohio Revised Code, the agency shall immediately set the date, time, and place for such hearing and forthwith notify the party thereof. The date set for such hearing shall be within fifteen (15) days, but no earlier than seven (7) days, after the party has requested a hearing, unless otherwise agreed to by the agency and the party."

Sincerely,

RON KELLER
Executive Director
Capitol Square Review and
Advisory Board

Registered Mail
Return Receipt Requested

CERTIFICATE OF SERVICE
omitted in printing

IN THE STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent J. Pinette, et al.,	:	
	:	
Plaintiffs,	:	Case No. C2-93-1162
	:	
v.	:	
	:	
	:	Judge Graham
	:	
Capitol Square Review and Advisory Board, et al.,	:	
	:	
	:	
Defendants.	:	

STIPULATIONS OF FACT

The parties, through their undersigned counsel, have agreed to submit the following stipulations of fact in order to facilitate resolution of plaintiffs' motion for temporary restraining order and preliminary injunction. The parties have agreed that to the extent these stipulations reference or quote from any documents, if these stipulations are in tension with or otherwise inconsistent with the text of any such document, these stipulations do not purport to override the text of any such document. Although these stipulations are intended to facilitate resolution of this matter, the parties have agreed

that they are not necessarily exhaustive of the factual record to be presented to this Court at the hearing in the form of affidavits or testimony, though the parties have agreed between themselves to make a good-faith effort to limit the amount of testimony, if any, that will be necessary to resolve this matter. If affidavits are submitted to the Court for purposes of presenting evidence in this matter, the parties have reserved all of their rights to object to the admissibility or the use of such affidavits on any defensible legal grounds.

1. Counsel for all parties have agreed and have so represented to this Court that the hearing on plaintiffs' motion for temporary restraining order and preliminary injunction that is scheduled for December 20, 1993, will address only the claims raised in Count One of Plaintiffs' Complaint.

2. Plaintiff Vincent J. Pinette is the Chief Executive Officer of the Knights of the Ku Klux Klan (Ohio Realm). Plaintiff Donnie A. Carr is the Unit Coordinator for Columbus, Ohio of the knights of the Ku Klux Klan (Ohio Realm). Plaintiff Knights of the Ku Klux Klan (Ohio Realm) is an unincorporated association whose members reside in the State of Ohio.

3. Defendant Capitol Square Review and Advisory Board is the state board chartered under Section 123.022 of the Ohio Revised Code that regulates the use of the Capitol Square.

4. Defendant Ronald T. Keller is the Executive Director of the Capitol Square Review and Advisory Board. Defendant Daniel Shellenbarger is the spokesperson for the Board. Defendant Richard H. Finan, an Ohio State Senator, is the chairperson of the Board.

5. The parties stipulate that venue is proper in this Court.

6. The Capitol Square, which is defined by law in Section 123.022(I) of the Ohio Revised Code, comprises an entire city block in downtown Columbus, Ohio, located south of Broad Street, north of State Street, east of High Street, and west of Third Street.

7. The Capitol Square is owned by the State of Ohio.

8. The Capitol Square is the seat of Ohio state government and is the site of the Ohio Statehouse, which is Ohio's state capitol building.

9. The Ohio Statehouse is the building in which the Ohio House of Representatives and the Ohio Senate meet in official session to carry out the duties constitutionally conferred upon the legislative branch of Ohio's state government.

10. The Governor and certain of the statewide elected officials also have offices in the Ohio Statehouse, and other offices are located there as well.

11. The Ohio Statehouse has been continually located on the Capitol Square for well over a century, since its construction was originally completed in 1861.

12. The Ohio Statehouse is a large rectangular building that centers the Capitol Square. A much taller rotunda rises above the middle of the rectangular building and is ordinarily topped by the United States and Ohio flags. An annex building is attached to the Statehouse on its eastern side. On its western side, the area between the Ohio

Statehouse and High Street is one city block long and approximately 240 feet wide.

13. The Ohio Statehouse is a distinctive building in the center of downtown Columbus, which stands as one of the outstanding and unusual examples of classical Doric architecture in the entire United States.

14. The Ohio Statehouse is the dominant feature of the Capitol Square. It is plainly and unavoidably visible from every vantage point upon the Capitol Square.

15. The Capitol Square Review and Advisory Board was created by the enactment of Senate Bill 381, which took effect on January 15, 1993.

16. The Board is charged in Section 123.022 of the Ohio Revised Code with specific powers and duties, among which are to operate the Capitol Square and to exercise sole authority in regulating all uses of the Capitol Square.

17. The Board has implemented its statutory mandate in part by adopting administrative rules pursuant to Chapter 119 of the Ohio Revised Code. Those rules became effective on October 29, 1993, after receiving final approval from the Joint Committee on Agency Rule Review. Those rules constitute Chapter 128 of the Ohio Administrative Code.

18. The Board meets at times and in a manner as the Board may prescribe.

19. Between meetings of the Board, the Executive Director conducts the ordinary and everyday affairs on behalf of the Board.

20. In recent years, certain displays have been placed upon the Capitol Square for limited periods during the month of December.

21. For the past several years, the displays placed upon the Capitol Square for limited periods during the month of December have included a Christmas tree and a free-standing Hanukkah menorah, which is a nine-branch candelabrum that serves as the primary visual symbol of the Jewish holiday of Hannukah and that has both religious and secular significance.

22. Defendants represent to this tribunal that to the best of their knowledge upon reasonable efforts made to ascertain the facts, no permit has previously been sought or granted to erect a Latin cross Upon the Capitol Square as part of these displays.

23. In recent years, Capitol Square has been the site of numerous assemblies.

24. On November 18, 1993, the Board met and voted not to permit any displays upon the Capitol Square during the month of December, 1993. This vote was invalid under the governing statute, Section 123.022(C) of the Ohio Revised Code, as it was not approved by five members of the Board.

25. Numerous public officials and private citizens communicated to the Board their disagreement with the action taken by the Board at its November 18, 1993 meeting. The Board also sought and received advice from counsel about the legal ramifications of that action.

26. On November 23, 1993, the Board met and voted to approve the displays of a Christmas tree and a

menorah upon the Capitol Square.

27. On November 29, 1993, Rabbi Capland submitted an application for a permit to display a menorah upon the Capitol Square from December 8-16, 1993. The permit application that was submitted by Rabbi Capland describes the type of event as a "Seasonal Display." See Exh. 3 (attached). The application was granted the same day.

28. On November 29, 1993, Donnie Carr submitted an application on behalf of the Knights of the Ku Klux Klan (Realm of Ohio) for a permit to display a cross upon the Capitol Square from December 8-24, 1993. The permit application that was submitted by ME. Carr describes the type of event as to "Erect a Cross for Christmas." See Exh. 4 (attached).

29. On December 3, 1993, Executive Director Keller denied the application for a permit to erect a cross upon the Capitol Square.

30. In a letter faxed to Mr. Carr on December 3, 1993, Executive Director Keller stated that the decision to deny the permit requested to erect a cross upon the Capitol Square "was made upon the advice of counsel, in a good faith attempt to comply with the Ohio and United States Constitutions, as they have been interpreted in relevant decisions by the Federal and State Courts. We would direct your attention in particular to controlling decisions recently rendered by the United States Supreme Court under the First Amendment to the United States Constitution." The letter also set forth relevant information about the right of administrative appeal that is provided to an applicant by Ohio law under Chapter 119 of the Revised Code. See Exh. 5 (attached).

31. On December 9, 1993, Benson A. Wolman submitted a Notice of Appeal to the Board on behalf of his client, the Knights of the Ku Klux Klan, seeking administrative review of the decision to deny the permit requested to display a cross upon the Capitol Square. The submission also requested an expedited appeal and hearing on the issue. See Exh. 6 (attached).

32. In a separate letter directed to counsel for the Board, also dated December 9, 1993, Mr. Wolman provided further information about the proposed display of a cross upon the Capitol Square. Mr. Wolman indicated that the cross "would be approximately ten feet high, six feet across, made from 2 x 6 lumber, painted white, secured upright by a free-standing tripod, and accompanied by a sign, readable from a distance, 'This cross was erected by private individuals without government support for the purpose of expressing respect for the holiday season and to assert the right of all religious views to be expressed on an equal basis on public property.'" Mr. Wolman also stated in the letter that "some matters, such as the contents of the sign, are open to negotiation." See Exh. 7 (attached).

33. On December 10, 1993, Executive Director Keller notified Mr. Wolman that the Notice of Appeal as submitted was defective under the governing administrative rules. He waived any such defects, however, except to require that Mr. Wolman submit immediately the "concise statement of the reason the appeal should be granted" required under the governing rules as an essential foundation for proceeding upon the administrative appeal. See Exh. 8 (attached).

34. In the December 10, 1993 letter to Mr. Wolman, Executive Director Keller also noted that he was waiving all time constraints otherwise imposed upon the

administrative appeal process by Ohio statute, in order to permit an immediate hearing upon the administrative appeal once Mr. Wolman submitted the required statement of the reason the appeal should be granted. See id.

35. In the December 10, 1993 letter to Mr. Wolman, Executive Director Keller also noted that the Board had never before received a request for "an administrative hearing relating to the issuance of a permit order," and thus had never before arranged for or conducted any such administrative hearing. See id.

36. On December 13, 1993, Mr. Wolman noted the Board's "prompt response" and submitted to the Board on behalf of his clients a "concise statement of the reasons the appeal should be granted." The statement sets forth the applicant's claim that the denial of the permit has "no basis in law or fact" and is contrary to various rights asserted by the applicant under the United States and Ohio Constitutions. See Exh. 9 (attached).

37. At the close of business on December 13, 1993, Mr. Wolman transmitted a letter to the counsel for the Board, seeking to arrange a mutually convenient time for the requested administrative hearing and offering to discuss possible stipulations to simplify the matter for resolution. In that same letter, Mr. Wolman also sought to obtain various specified documents from counsel for the Board for use in this proceeding. See Exh. 10 (attached).

38. On December 14, 1993, the Board retained attorney Keith S. Mesirow of Columbus to serve as hearing examiner in order to conduct an administrative hearing on this matter as provided in Section 119.09 of the Revised Code, and notified Mr. Mesirow to be prepared to conduct a hearing as scheduled by agreement between the parties, but

possibly as soon as Friday, December 17, 1993.

39. Also on December 14, 1993, counsel for the Board provided Mr. Wolman with certain documents responsive to the requests made in the letter received from Mr. Wolman at the close of business on December 13, 1993.

40. Also on December 14, 1993, counsel for both parties agreed to meet on December 15, 1993, in an effort to reach agreement on procedures and stipulations to facilitate a prompt resolution of this matter.

41. On December 15, 1993, and again on December 16, 1993, counsel for both parties met and discussed possible stipulations and procedures to facilitate and expedite the resolution of this matter. Counsel ultimately reached agreement upon the stipulations as set forth here.

42. On December 16, 1993, the denial of the permit application for the Knights of the Ku Klux Klan to erect a cross upon the Capitol Square was set for an administrative hearing, pursuant to Chapter 119 of the Revised Code, to be held at 2:00 p.m. on December 17, 1993. Under state law, the hearing examiner is empowered to issue a written report setting forth his findings of fact and conclusions of law and a recommendation of the action to be taken by the agency. See Exh. 11 (attached).

43. A Christmas tree has been displayed upon the Capitol Square from December 7, 1993 to the present and remains on display currently. A menorah was displayed upon the Capitol Square from December 8, 1993 until December 16, 1993 and is no longer on display there.

44. In recent years, and again this year, a large

Latin cross composed of white lights has been displayed throughout the holiday season on all four sides of a privately owned building known as the LeVeque Tower, one of the tallest buildings in Columbus, which is located one block northwest of Capitol Square.

Respectfully submitted,

BENSON A. WOLMAN
(0040123)
Trial Attorney
DAVID GOLDBERGER
(0010292)
Of Counsel
Moot, Copes & Stanton
3600 Olentangy River Road
Building 501
Columbus, Ohio 43214-3913
(614) 459-4140
(614) 459-4140

COUNSEL FOR PLAINTIFFS

RICHARD A. CORDRAY
(0038034)
Trial Attorney
CHRISTOPHER S. COOK
(0053067)
ANDREW S. BERGMAN
(0054582)
Of Counsel
OH Attorney General's Office
State Office Tower
30 East Broad Street
Columbus, Ohio 43215-3428
(614) 466-5026

COUNSEL FOR DEFENDANTS

Capitol Square Review & Advisory Board EXHIBIT 3
Phone: 614/752-9777 Fax: 614-/7525208
Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date: 11-29-93

Capitol Square Review and Advisory Board exercises
supervision and control of
Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Rabbi [illegible]

Representative's name, address, phone #: [illegible]
to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): Dec. 8, 16, 93

Event time: N/A Portion of Capitol Square to be occupied: Grounds

Approximate number of persons to attend: N/A

Type of event: Seasonal Display

Use: The us organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to: Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause..
2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws.
3. Bond Requirement: An optional bond may be

required based on the [illegible] of the event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit. C.S.R.A.B. has the discretion to waive this bond requirement.

4. Facility Protection: The user organization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.

5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.

6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.

7. Signs, Banners, Flags: The use of stickers or labels, cellophane pressure sensitive tape, screws, nails, sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative condition of the Capitol buildings or any permanent structure on the premises be prohibited

8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be charged to the permit holder.

9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.

10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.

11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.

12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.

13. Liability: The user organization shall indemnify and hold harmless the State of Ohio and C.S.R.A.B. against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

X ACCEPTED (RTK)

C.S.R.A.B. use only _____ __ DENIED

Fee: $20.00 C.S.R.A.B. REPRESENTATIVE

Paid: $20.00 I have read the above permit and agree to

Date: 11/29/93 the terms and conditions specified therein

Clerk: Cash

_____

PERMIT APPLICANT

DATE 11/29/93

Capitol Square Review & Advisory Board EXHIBIT 4

Phone: 614/752-9777 Fax: 614-/7525208

Statehouse, Columbus, Ohio 43215

APPLICATION FOR
PERMIT TO USE STATEHOUSE GROUNDS

Date:

Capitol Square Review and Advisory Board exercises supervision and control of Capitol Square pursuant to 123.02 O.R.C.

Capitol Square Review and Advisory Board hereby grants permission to:

Name of Group: Knights of the Ku Klux Klan (Realm of Ohio)

Representative's name, address, phone #: Donnie A. Carr (216) 631-0305
P.O. Box 28705, Columbus, Ohio, 43228-0705
to occupy and use Capitol Square subject to the terms and conditions below:

Date and time (set-up & clean up included): 12-8-93

Event time: All day 24 hours Dec. 8 - 24, 1993 Portion of Capitol Square to be occupied: StateHouse Lawn (Front)

Approximate number of persons to attend:

Type of event: Erect a Cross for Christmas

Use: The user organization agrees that, during the terms of this permit, assigned areas shall be operated under the following procedures:

1. Administrative Fee: A $20 administrative fee will be assessed for the use of any portion of the Capitol Square facilities. Checks may be made payable to: Capitol Square Review and Advisory Board. The board, at its discretion, may waive fees for just cause..
2. Prescribed Activities: The user organization shall not permit any act inconsistent with or in violation of local, state, or federal laws. **(DOES NOT APPLY)**

3.X Bond Requirement: An optional bond may be required based on the nature event. The bond amount will be determined by the Capitol Square Review and Advisory Board (C.S.R.A.B.) to protect damage to the property incurred during the term of this permit.

C.S.R.A.B. has the discretion to waive this bond requirement.

4. Facility Protection: The userorganization shall maintain Capitol Square facilities in a reasonable manner during the terms of this permit, keeping it clean, sanitary, and free of debris. After termination of this permit, Capitol Square areas shall be returned to C.S.R.A.B. in the same condition as prior to the event.
5. Security/Maintenance: C.S.R.A.B. security or maintenance personnel will be used as agreed upon by the board and permit applicant. All service charges will be billed to the permit holder prior to the date of the event. If any additional charges are incurred during the event, the permit holder will be billed at the completion of the event.
6. Vehicles/Structures: No equipment, apparatus, machine or vehicle is permitted on Capitol buildings or grounds without the express written permission of the C.S.R.A.B.
7. Signs, Banners, Flags: The use of stickers or labels, cellophane pressure sensitive tape, screws, nails, sticks, poles, or any other mounting technique for displaying signs, banners, or flags which adversely affects the structural, [illegible], or decorative condition of the Capitol buildings or any permanent structure on the premises be prohibited
8. Supplemental Accommodation: Supplemental accommodation such as, but not limited to: electricity, water, litter control, and outdoor facilities may be provided by C.S.R.A.B. These items will be charged to the permit holder.
9. Interference: Use of Capitol Square facilities shall only be done in a manner so as not to interfere or compete with the normal business proceedings of the Ohio General Assembly. On the days of each

proceedings, hours of public activities shall be held to the maximum extent possible during lunch hours from 11:00 A.M. to 1:00 P.M. or after 4:30 P.M.

10. Sound Equipment: Use of sound projection equipment shall be in compliance with local noise ordinances and used in a manner so as to not interfere with the proceedings of the General Assembly or other activities being conducted on Capitol Square.

11. Electrical Hook-up: There is a $5.00 charge for electrical hook-up. please make your check payable to the Capitol Square Review and Advisory Board and submit it to C.S.R.A.B. before the date of the event.

12. Food/Beverages: No food or beverages, or merchandise shall be sold or dispensed on Capitol Square Grounds without the express written consent of C.S.R.A.B. No transport vendors are permitted to use the Capitol Square facilities. Food and beverage dispensing shall be in accordance with all state, and federal laws.

13. Liability: The user organization shall indemnify and hold harmless the State of Ohio and C.S.R.A.B. against any and all claims, demands, actions or causes of actions, together with any and all losses, costs or related expenses asserted by any person or persons for bodily injury, death or property damages resulting from or arising out of this permitted use of Capitol Square.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

___ ACCEPTED

C.S.R.A.B. only _____ _X_ DENIED

Fee: $20.00 nonrefundable

C.S.R.A.B. REPRESENTATIVE

Paid: $20.00
Date: 1/29/93
Check: Cash

I have read the above permit and agree to the terms and conditions specified therein.

PERMIT APPLICANT
DATE 11-29-93

EXHIBIT 5

CAPITOL SQUARE
REVIEW AND
ADVISORY BOARD

The Statehouse
Columbus, OH 43215
(614) 752-9777
FAX (614) 752-5209

Hon. Richard Finan
Chairman
Ronald T. Keller
Executive Director

Christopher Cook
Assistant Attorney
General
Legal Counsel

December 3, 1993

Donnie A. Carr
P.O. Box 28705
Columbus, Ohio 43220-0705

Dear Mr. Carr:

Pursuant to Ohio Administrative Code 128-4-02(B), the Capitol Square Review and Advisory Board hereby gives notice that it must deny your application to erect a cross on the Statehouse Grounds between December 8, 1993 and December 24, 1993. This decision was made upon the advice of counsel, in a good faith attempt to comply with the Ohio and United States Constitutions, as they have been interpreted in relevant decisions by the Federal and State Courts. We would direct your attention in particular to controlling decisions recently rendered by the United States Supreme Court under the First Amendment to the United States Constitution.

In addition, I assume you are aware that we placed a telephone call to you earlier this week, seeking more information about the precise nature of the display you were requesting the Board to approve. We have not yet heard from you in response to that call.

Pursuant to Chapter 119, Ohio Revised Code and 128-4-04 of the Ohio Administrative Code, you are hereby advised that you may request a hearing on this matter. If you wish to request such a hearing, that request must be made in writing and received by the Capitol Square Review and Advisory Board within thirty (30) days of the date of mailing of this notice. This notice was mailed on the date indicated above.

You are further advised that you are entitled to appear in person, or by your attorney, or both, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for and against you.

In the event there is no request for such hearing received within thirty (30) days of the date of mailing of this notice, the Capitol Square Review and Advisory Board will consider this matter closed.

Section 119.07, Ohio Revised Code, in part states:

> "Whenever a party requests a hearing in accordance with this section and Section 119.06 of the Ohio Revised Code, the agency shall immediately set the date, time, and place for such hearing and forthwith notify the party thereof. The date set for such hearing shall be within fifteen (15) days, but no earlier than seven (7) days, after the party has requested a hearing, unless otherwise agreed to by the agency and the party."

Sincerely,

RON KELLER
Executive Director
Capitol Square Review and
Advisory Board

Registered Mail
Return Receipt Requested

EXHIBIT 6

MOOT, COPE &STANTON
A Legal Professional Association

3600 Olentangy River Road
Columbus, Ohio 43214-3913
(614) 459-4140
Telefax
(614) 459-4503

Phillip R. Moots
Jon M. Cope
Elizabeth M. Stanton

Wanda L. Carter
Benson A. Wolman
Catherine A. Cunningham

9 December 1993

VIA FACSIMILE 752-5209 AND FIRST CLASS MAIL
Capitol Square Review and Advisory Board
Ronald T. Keeler, Executive Director
Hon. Richard H. Final, Chairperson
The Statehouse
Columbus, Ohio 43215

RE: Appeal of December 3, 1993 denial of Permit Application of Knights of the K Klux Klan to display cross; Request for Expedited Hearing

Dear Mr. Keeler and Senator Finan:

This constitutes a Notice of Appeal from, and a request for an expedited appeal and hearing on, the December 3, 1993 denial of the November 29, 1993 Application by the Knights of the K Klux Klan (Ohio Realm) for a Permit to Use Statehouse Grounds to display a cross from December 8, 1993 through December 24, 1993.

This notice has been discussed with your counsel and is being sent simultaneously to counsel via facsimile and first class mail.

Respectfully submitted,

Benson A. Wolman
David Goldberger
Attorneys for Appellant

cc: Christopher Cook, Assistant Attorney General
Andrew Sutter, Assistant Attorney General
Richard A. Cordray, State Solicitor
Lee Fisher, Attorney General
Donnie A. Carr, Unit Coordinator, Knights of the KKK (Ohio)
Vincent J. Pinette, Grand Titan, Knights of the KKK (Ohio)

EXHIBIT 7

MOOT, COPE & STANTON
A Legal Professional Association
Phillip R. Moots

3600 Olentangy River Road
Columbus, Ohio 43214-3913
(614) 459-4140
Telefax
(614) 459-4503

Jon M. Cope
Elizabeth M. Stanton

Wanda L. Carter
Benson A. Wolman
Catherine A. Cunningham

9 December 1993

VIA FACSIMILE 752-5209 AND FIRST CLASS MAIL
Christopher Cook, Assistant Attorney General
Andrew Sutter, Assistant Attorney General
Richard A. Cordray, State Solicitor
Lee Fisher, Attorney General
30 East Broad Street
Columbus, Ohio 43266-0410

Re: Capitol Square Review and Advisory Board Denial of Permit Application of Knights of the Ku Klux Klan to display cross; Request for Expedited Hearing

Gentlemen:

It was a pleasure meeting with you this afternoon. Subsequent to that gathering, we met with Mr. Pinette and Mr. Carr.

With regard to the reference to a telephone call in the December 3, letter from Ron Keller, I advised Chris Cook by telephone this afternoon, and this is to confirm that, Mr. Pinette and Mr. Carr state that:

1) There was, indeed, a call from Mr. Shellenbarger to the Cleveland number;

2) Mr. Pinette was out of town and Mrs. Pinette gave the caller the number of the National headquarters in Arkansas to call for further information;

3) Mr. Carr was apprised of the call on the same day and returned the call to Mr. Shellenbarger on that same day;

4) When he called Mr. Shellenbarger, Mr. Carr indicated who he was and that he had the requested information; he was informed by a secretary that Mr. Shellenbarger was out and that she did not know when he would return; and

5) Mr. Pinette and Mr. Carr are not aware of any call to the National headquarters, if one was made, nor of any return call to the Cleveland number.

In response to your inquiry as to the description (including the size, shape, material, and manner of securing the display), Mr. Carr advises us that the cross would be approximately ten feet high, six feet across, made from 2 x

6 lumber, painted white, secured upright by a free-standing tripod, and accompanied by a sign, readable from a distance, "This cross was erected by private individuals without government support for the purpose of expressing respect for the holiday season and to assert the right of all religious views to be expressed on an equal basis on public property." It is our understanding that some matters, such as the contents of the sign, are open to negotiation.

Accompanying this letter is a copy of the Notice of Appeal and Request for Expedited Hearing which we discussed today; it was sent via facsimile and first class mail to the Board today. If you have any suggestions as to alternative means of resolving this matter, please let us know.

Cordially,

Benson A. Wolman
David Goldberger

enclosure: Notice of Appeal

cc: Vincent J. Pipette
Donnie A. Carr

3157\004\LTRCOO01.BAW

EXHIBIT 8

December 10, 1993

Mr. Benson A. Wolman
Moots, Cope & Stanton
3600 Olentangy River Road
Columbus, Ohio 43214-3913
Telefax: (614) 459-4503

VIA FACSIMILE AND ORDINARY MAIL

CAPITOL SQUARE
REVIEW AND
ADVISORY BOARD

The Statehouse
Columbus, OH 43215
(614) 752-5209
FAX (614) 752-5209

Hon. Richard Finan
Chairman

Ronald T. Keller
Executive Director

Christopher Cook
Assistant Attorney
General
Legal Counsel

Re: Notice of Appeal from Denial of Permit to Display Cross on Capitol Square

Dear Mr. Wolman:

The Board has received your Notice of Appeal and Request for Expedited Hearing, both of which are based on the previous denial of a permit for your client to display a cross on the Statehouse grounds from December 8 to December 24 of this year.

The Notice of Appeal that you have submitted is not in compliance with O.A.C. 128-4-04, which is understandable because the rule only took effect on October 29, 1993, after receiving final approval from the Joint Committee on Agency Rule Review. We are waiving those requirements except that in order to process your appeal

promptly and effectively, the Board not need to receive from you the "concise statement of the reason the appeal should be granted" as set forth in that Rule. I would ask you to submit that statement to the Board as quickly as possible, preferably by immediate facsimile transmission.

Our counsel has undertaken a review of the applicable laws and regulations governing the procedures for an administrative appeal. (Please understand that this body has never before received a request pursuant to statute for an administrative hearing related to the issuance of a permit order). R.C. 119.07 states that an agency is to set the date, time, and place of a hearing "within fifteen days, but not earlier than seven days, after the party has requested a hearing." It also appears, however, that an agency has discretion under the statute to waive these time constraints if requested to do so by the party giving notice.

In view of the sensitive timing of the particular matters at issue here, counsel has advised us that the Board should waive the seven-day requirement and try to schedule an administrative hearing as soon as possible. Accordingly, we do waive the seven-day requirement as provided in the statute. As soon as the Board receives a brief statement of the reasons why your client believes that the initial denial of the permit was improper and thus that the appeal should be granted, we will immediately schedule an expedited hearing as you have requested. In the meantime, we will continue to take all necessary steps to prepare and schedule a proper administrative hearing in compliance with the governing statutes.

Sincerely,

RON KELLER

Executive Director
Capitol Square Review
and Advisory Board

EXHIBIT 9

MOOT, COPE &STANTON
A Legal Professional Association

3600 Olentangy River Road
Columbus, Ohio 43214-3913
(614) 459-4140
Telefax
(614) 459-4503

Phillip R. Moots
Jon M. Cope
Elizabeth M. Stanton

Wanda L. Carter
Benson A. Wolman
Catherine A
Cunningham

9 December 1993

VIA FACSIMILE 752-5209 AND FIRST CLASS MAIL
Capitol Square Review and Advisory Board
Ronald T. Keeler, Executive Director
Hon. Richard H. Final, Chairperson
The Statehouse
Columbus, Ohio 43215

RE: Appeal of December 3, 1993 denial of Permit Application of Knights of the K Klux Klan to display cross; Request for Expedited Hearing

Dear Mr. Keeler and Senator Finan:

Your letter that was transmitted after hours Friday was received by me this morning. We appreciate the prompt response. Following is a concise statement of the reasons the appeal should be granted:

1. The denial violates the guarantees of the freedom of expression and free exercise of religion secured under the First and Fourteenth Amendments to the Constitution of the United States and similar provisions of the Constitution of the State of Ohio;

2. The denial deprives the appellant of the equal protection of the laws guaranteed under the Fourteenth Amendment and similar provisions of the Ohio Constitution;

3. The denial deprives the appellant of due process of law secured under the Fourteenth Amendment to the Constitution of the United States and the Constitution of the State of Ohio as well as of other rights guaranteed under the Constitution of the United States and the Constitution of the State of Ohio;

4. The denial constitutes a bill of attainder and an ex post facto law under Article I, Section 10 of the Constitution of the United States and similar provisions of the Constitution of the State of Ohio;
and

5. The denial states, and there is, no basis in law or fact that would justify denying the permit.

Not yet having received a copy of the rules, policy or minutes of the board reciting the underlying authority for the action of the Executive Director, the appellant does not waive the right to raise any further constitutional or other bases upon which the ruling may be challenged.

Sincerely,

Benson A. Wolman
David Goldberger
Attorneys for Appellant

BAW:smk

cc: Christopher Cook, Assistant Attorney General
Andrew Sutter, Assistant Attorney General
Richard A. Cordray, State Solicitor
Lee Fisher, Attorney General
Donnie A. Carr, Unit Coordinator, Knights of the KKK (Ohio)
Vincent J. Pinette, Grant Titan, Knights of the KKK (Ohio)

EXHIBIT 10

MOOT, COPE &STANTON
A Legal Professional Association

3600 Olentangy River Road
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Cunningham

9 December 1993

VIA FACSIMILE 752-5209 AND FIRST CLASS MAIL
Christopher Cook, Assistant Attorney General
Andrew Sutter, Assistant Attorney General
Richard A. Cordray, State Solicitor
Lee Fisher, Attorney General
30 East Broad Street
Columbus, Ohio 43266-0410

Re: Capitol Square Review and Advisory Board Denial of Permit Application of Knights of the Ku Klux Klan to display cross; Request for Expedited Hearing

Gentlemen:

Please contact me so that we may arrange a mutually agreed upon time for the hearing and to discuss possible stipulations to simplify the matter.

Also, if you will not be arranging for a stenographic transcript of the appeal hearing, please apprise me reasonably in advance.

In addition, please supply via facsimile (or, if voluminous, we will pick up) copies of:

1. OAC-128-04;

2. the original board or other policy, statement,

minutes, or guidelines which the borad appeared to have adopted regarding holiday or other displays;

3. the present board policy, statement, minutes or guidelines which the board has adopted relative to holiday or other displays;

4. any other policies or materials, statements, minutes or guidelines which pertain to holiday or other displays and the Ku Klux Klan or any other individuals or groups; and

5. all materials related to the Lubavitch menorah application (and disposition) this year and in prior years and any other application (and disposition) for the use of Capitol Square for holiday or other displays.

Thank you for your assistance in these matters.

Cordially,

Benson A. Wolman
David Goldberger
Attorneys for Appellant

BAW:smk

cc: Vincent J. Pinette
Donnie A. Carr

3157\004\LTRCOO02.BAW

Attorney General
LEE FISHER

December 16, 1993

Benson A. Wolman, Esq
Moots, Cope & Stanton
3600 Olentangy River Road
Columbus, Ohio 43214-3913

Re: Schedule of Administrative Hearing

Dear Mr. Wolman:

The expedited administrative hearing that you requested on behalf of the Knights of the Ku Klux Klan has been scheduled for Friday, December 17, 1993 at 2:00 p.m. The hearing will be conducted in the North Hearing Room of the Statehouse Senate Building (the Ohio Statehouse Annex).

Thank you for your cooperation in this matter.

Very truly yours,

CHRISTOPHER S. COOK
Assistant Attorney General
(614) 466-2980

CSC:elk

cc: Donnie A. Carr
Vincent Pinette
David Goldberger

DEFENDANTS' EXHIBIT C
[Reprinted in brief in opposition to writ of certiorari. p. RA 17]

DEFENDANTS' EXHIBIT D

[Reprinted in brief in opposition to writ of certiorari. p. RA 19]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT J. PINETTE, ET AL.,	:	
	:	
Plaintiffs,	:	
v.	:	CASE NO. C2-93-1162
	:	
CAPITAL SQUARE REVIEW AND ADVISORY BOARD, et al.,	:	JUDGE GRAHAM
	:	
Defendants.	:	

AFFIDAVIT

STATE OF OHIO, COUNTY OF FRANKLIN, SS:

Dr. Dennis Anderson, being first duly cautioned and sworn, deposes and states as follows:

1. I am the President of Trinity Lutheran Seminary, a seminary of the Evangelical Lutheran Church in America, located at 2199 E. Main Street, Columbus, Ohio 43209.

2. I have been the President of Trinity Lutheran Seminary for the past four years, from January, 1990, to the present, December 20, 1993

3. I attended Gustavus-Adolphus College and earned the undergraduate degree of a Bachelor of Arts in 1959.

4. I attended the Lutheran School of Theology at Chicago, Illinois from 1959 to 1963 and earned a Master of

Divinity degree in 1963.

5. I received further post-graduate training at the Austin Presbyterian Theological Seminary from 1964 to 1965.

6. Prior to becoming President of Trinity Lutheran Seminary, I was a Bishop with the Lutheran Church, Nebraska Synod. I held this position for twelve years.

7. I have been a Pastor in the Lutheran Church for thirty (30) years.

8. It is my opinion, confirmed by widely acknowledge and accepted historical research, that the cross is a wide spread religious symbol found in both Old and New Worlds. The source of the cross is in remotest antiquity as a symbol of the life of homo religious. It is used in artistic, scientific, mathematical, architectural, geographic and cosmological fields. While it is one of the most ancient symbols, the cross is a symbol par excellence of Christianity itself as well as of Christ its head.

9. It is my opinion that in American religious use and culture the Latin Cross is the most common and constitutes the primary symbol of Christianity.

10. For Christians, the cross is a sign evoking memory and knowledge of a specific historical event, the death of Jesus of Nazareth whom Christians adknowledge as the Christ, Lord and Saviour. From the first century on, Christians have understood the cross as connected both to the mystery of creation and redemption. It is a symbol thus not only of the death of Jesus but of the Resurrection of Jesus and of God's saving acts in history.

11. It is because of a historical event, the death of Jesus of Nazareth, crucified at Golgotha - that the cross is endowed with transcendent significance. This is reflected in the fact that early Christian theologians began the work of re-interpreting pagan (non-Christian) uses of crosses in light of Christian theology. Among such theologians were Justin Martyr and Tertullian. By the end of the 6th Century crosses marked the altars of Eastern and Syrian Churches and by the end of the 7th Century crosses decorated all "monuments" in both the East and the West. Thus in both Eastern and Western Europe, the Middle East, and the Americas the cross is considered inseparable from the New Testament witness to Jesus as Lord and Saviour.

12. The cross in American culture and religious culture, and the Latin cross in particular, is thus not only a religious symbol, but "sectarian" in that it has primary reference to Jesus and Christianity.

13. The Latin cross, as the unmistakably inherent symbol of Christianity, transcends any specific holy season or holiday such as Christmas or Easter however, it is most specifically associated with Good Friday and Easter because of the crucifixion and resurrection. It is not considered a Christmas symbol as such. It is a symbol of Jesus and the Christ.

Further Affiant sayeth naught.

_____

Dr. Dennis Anderson

Subscribed and sworn to me this 20th day of December, 1993.

_____

Notary Public

Susan C. Strait
Notary Public - State of Ohio
My commission expires
April 30, 1996

A. Yes, it is.
Q. What is the mission of the Knights of the Ku Klux Klan?
A. First, I would like to clarify, the name Ku Klux Klan is a term which is in the public domain. It is used by many different groups. At last count, I believe there were 96 separate groups using that term. Our group, the Knights of the Ku Klux Klan, is a law-abiding group. We are totally opposed to any violence against any other person, whether it be because of their race or because of their religion, but our goals are the establishment or the reestablishment of a Christian government in the United States of America, and we do believe that each race should be separate to rise to their own level. We believe in fundamental family values. Basically, everything that our country was founded on, the original Constitution, that's what we are for.
Q. Did you apply for the permit that is at issue

in this matter?
A. Yes, I did.
Q. Why did you apply for it?
A. I applied for the permit after hearing that the -- I
believe it was on the 18th of November, I heard on the
television that the Capitol Square Review and Advisory
Board had denied or had passed a ruling where they were

[43]

going to allow no religious displays whatsoever on the
statehouse grounds. After that, the next day or
subsequent thereafter, maybe a couple of days, they had
said that there was a great deal of pressure upon them,
and that they had reversed the decision and would allow
the menorah, allow the tree, and the reason they had
stated before on their banning on everything was that they
were afraid that the Klan would attempt to erect a cross.
MR. CORDRAY: Your Honor, we would object to some
of this testimony. Much of that last answer is clearly
based on hearsay. It is not clear to me that the witness
has personal knowledge -
THE COURT: Well, he said he read it in the

paper, so that is first-hand knowledge of what he read.
Overruled. Go ahead.
MR. CORDRAY: Thank you, Your Honor.
THE WITNESS: As I stated, the reason that they had not wanted to allow any of displays was that they were afraid that the Klan would -- if I remember the direct quote -- it was embarrass the city, that they would not - the Klan, meaning us, would not lose another chance to embarrass the city.
MR. CORDRAY: Your Honor, may we stipulate that this testimony is being offered to demonstrate Mr. Carr's understanding rather than for the truth of the matters

[44]

asserted?
THE COURT: Well, Mr. Cordray, I am going to let it in, and I will sort out how it can be used.
MR. CORDRAY: Thank you, Your Honor.
THE COURT: Go ahead.
THE WITNESS: After that, after conferring with my superiors in the organization, we had decided that since we were being excluded by the city or the state, the Capitol Square Review and Advisory Board, that we would

attempt to obtain a permit to erect a cross for the Christmas season. At no time did we stipulate that we wanted the cross to be part of the holiday, quote unquote, display that was there. We said on the application, it states erect cross for Christmas. It doesn't specify that we put the cross beside the menorah, beside the tree. I applied, I believe, on the 29th for the permit, and I believe that was the same day that the permit for the menorah was also filed, and then subsequently the permit was denied. I was made aware of that through the media before I got the registered mail.

BY MR. WOLMAN:

Q. Do you care where the cross would be displayed on the statehouse ground?

A. Absolutely not, not as long as it is not segregated as in behind a wall or something where it can't be seen,

[47]

A. Yes, I believe he is.

Q. Thank you. Proceed.

A. He came out from the building at a dead run, came into the press conference, broke through the reporters that were there, and in a very irate, very agitated manner, stated this is illegal, you cannot have a

press
conference here, you don't have a permit. When Mr.
Pinette tried to ask him if he needed a permit to make a
press statement, Mr. Shellenbarger totally ignored the
question, kept repeating that you have to stop this right
now, you can't speak any longer, so we said we would go
get a permit. Mr. Shellenbarger -- as we turned to go
inside the building to get the permit, Mr. Shellenbarger
reached out, grabbed Mr. Pinette's jacket and if to say
you can't go there. I told him to please remove his
hand. This was on the videotape of the local television
program. He did so. As we were going inside to get the
permit, the reporters were asking Mr. Pinette questions.
Every time he answered a question, Mr. Shellenbarger said
that is another $20 permit you owe us.
By the time we had gotten to the inside of the
Capitol Square Review and Advisory Board, I think we were
up to like $80 because Mr. Pinette had actually spoken
four different words.
When we filed for the permit, Mr. Shellenbarger

-- for the press conference that we were going to have right then, Mr. Shellenbarger stated that, well, this is going to take a week for us to act on this permit for you to hold this press conference, which we were holding at that instant.

Also, subsequent to that, when I personally applied for the permit for the cross, we went into the Capitol Square Review and Advisory Board. Mr. Shellenbarger wasn't there at that time. I spoke with the secretary, obtained the permit, filled it out.

Q. Excuse me, you obtained the permit or the application?

A. The application for the permit, excuse me. I obtained the application for the permit, I subsequently filled it out. As I came back in to get the permit, I noticed that there were cartoons out of a newspaper, I imagine, or perhaps someone had drawn them, and the cartoons were -- a brief synopsis of it, there was a drawing of a robed klansman, there were two windows as if teller windows. Over one was the sign which read applicants for permits to assemble. The other sign said idiots with constitutional rights. The person was pointing -- the person in the cartoon was pointing to the

door with the idiots, saying I think you need to go next door. I saw several cartoons that were blown up to about,

[49]

I would say, one foot by one foot, and one which was at least 2 foot by 3 foot on several of the offices, and I felt that was prejudicial against us.

MR. CORDRAY: Objection, Your Honor, I am not sure I quite understood the relevance of that last portion of the statement to the defendants in this case. Maybe I merely misunderstood the testimony.

THE COURT: As I understand it, he's simply citing evidence to support his belief that the authorities charged with the duty of issuing these permits were biased against his organization.

MR. CORDRAY: All right.

THE COURT: The Court will let it in for that purpose.

THE WITNESS: Also, at that same time, while I was there obtaining the application for the permit, Mr. Shellenbarger did enter as I was turning over the application. He once again came in very irate, what's going on, what's going on, seeing that it was me.

I explained to him that we were filing for a permit to erect a cross. Mr. Shellenbarger took the application fee, he made a very big show of writing "nonrefundable" on the $20 application fee in very large letters as if to say you just wasted $20, and we got a copy of the permit -- or the application for the permit,

[50]

and as I said, that has led me to believe that the Capitol Square Review and Advisory Board is prejudiced against our particular group, and any motion or any petition that we might file.

BY MR. WOLMAN:

Q. How many copies of that cartoon did you see?

A. I personally saw at least three or four, and like I said, one was at least 2 foot by 2 foot, it was very large.

Q. Mr. Carr, what was it you wanted to erect on the day -- for the period of time that you indicated on the permit application?

A. It was a cross which was to be 10 foot high, 6 foot cross member, painted white. It would be held by a free standing tripod. On that also would be a cardboard disclaimer which would have inscribed on it that this has

been erected with private funds without the authorization of the state, and that it was to be there as an expression of the holiday season, and as an expression that we believe that all religious views should be expressed. Nowhere on the cross was it to say erected by the Ku Klux Klan or anything of that nature.

Q. Was the so-called disclaimer sign fixed in your mind or was it subject to negotiation?

A. It was subject to negotiation. Whatever would work,

[51]

we were willing to work with the Capitol Square Review and Advisory Board or any other body as to whatever would fulfill what they believed the obligations would be for the disclaimer.

Q. What is the cross? Is it a symbol of religion?

A. Obviously the cross has a religious connotation. To us, meaning the Knights of the Ku Klux Klan, it has many other applications. It is a symbol to us of freedom, a symbol of -- it is hard to put into words. To us, it is a sacred symbol, but it is also a symbol of going against tyranny, a symbol of freedom. We believe that it is one

of the best symbols that exemplify what we believe in, and
we have used it for 128 years.
Q. A symbol against tyranny in the manner that Jesus of
Nazareth opposed tyranny?
A. That, and also the cross originated -- the Ku Klux
Klan's use of the cross originated from the early Scottish
clans in Scotland in the 1300s which used the cross as a
symbol to rally the clans together to fight against their
English oppressors.
MR. WOLMAN: That is all the questions I have,
Your Honor.
THE COURT: All right. Who will cross-examine?
MR. CORDRAY: I will, Your Honor.
THE COURT: Mr Cordray

[52]

- - -

CROSS-EXAMINATION

BY MR. CORDRAY:
Q. Mr. Carr, I am Richard Cordray on behalf of the
state.
I believe you indicated that your position is
that you are a unit coordinator for the Ku Klux Klan?
A. Yes, that is right, Knights of the Ku Klux Klan.
Q. Is there any other name for your position?

A. The term in Klan parlance would be the exalted
cyclops.
Q. Exalted cyclops. That would be a unit coordinator,
is that correct?
A. Yes.
Q. Mr. Pinette has been referred to in the complaint as
the chief executive officer in his affidavit of the Ku Klux Klan. Is there another name for his position?
A. He is the regional coordinator.
Q. Is there another name in Klan parlance?
A. In Klan parlance he would be the grand titan.
Q. The grand titan?
A. Yes.
Q. You stated in response to some questions by Mr.
Wolman that one of the central purposes of your organization is, and I quote you, to establish a Christian

[53]

government in America, is that correct?
A. To return the government of the United States to its
original foundations which we believe does have Christian
connotations, yes.
Q. So in fact, as you said earlier, part of your objective is to establish a Christian government in America, is that correct?
A. As I said, to return the government to as it was
originally founded.
Q. You also said in response to the

question --

MR. WOLMAN: Asked and answered, Your Honor.

THE COURT: If you have an objection, stand and say I object.

MR. WOLMAN: Object, Your Honor.

THE COURT: Would you read the question back?

(Question read).

THE COURT: I am going to sustain the question. It is argumentative. Go ahead.

BY MR. CORDRAY:

Q. Is it correct that in response to the question from Mr. Wolman, and I suppose the record will reflect this, you stated that part of the objective of your organization is to establish a Christian government in America?

A. Yes.

[54]

Q. Thank you. In your view, would the erection of a cross on Capitol Square help to advance the objective of your organization of establishing a Christian government in America?

A. No.

Q. Would the denial of an opportunity to display your cross on Capitol Square retard your objective of attempting to establish a Christian government in America?

A. I believe the denial of the application would adversely affect our right to display symbols, whether it be Christianity or any other symbol that we decide to erect.

Q. Would it have any impact on your purposes of attempting to return the government of the United States more toward Christian principles?

A. You mean on a national level?

Q. Even on a local level here in Ohio, central Ohio.

A. I'm sorry, I don't quite follow exactly what you mean.

Q. Let me rephrase the question.

A. Please.

Q. You have stated in response to questioning that part of the objectives of your organization are to establish a Christian government in America, and you have elaborated to return the government of America more along its

[55]

fundamental Christian origins.

A. Correct.

Q. My question to you is: Is your request to have a cross erected on Capitol Square during the Christmas season part of the efforts by which you are attempting to achieve those objectives?

A. Yes, I would believe that it is a part -- yes, to erect the cross would be to help us return to the Christian values, yes.

Q. You have also indicated in response to questions from Mr. Wolman that -- let me try to be clear on this, and I hope you will clarify -- that you don't really want this cross to be part of the state's holiday seasonal display, is that correct?

A. No, I said that I did not -- we did not specify that it be part of the holiday display. I didn't say that we didn't want it to be, I said that we did not specify that it would be.

Q. Do you have a preference in that regard?

A. Not at all. Anywhere on the -- anywhere on the ground. That is what it said in the application, erect a cross for Christmas. It didn't say erect it with the holiday display.

Q. Do you prefer that the cross stand alone, or would you prefer --

[57]

A. Yes.

Q. Did you receive a bill?

A. No, we didn't.

Q. Have you paid any money or been asked to pay any

money since then on that occasion?
A. For that particular -
Q. Yes.
A. No.
Q. Did that press conference go forward? I believe you said --
A. Not on the statehouse grounds. We were forced to move on to the public sidewalk.
Q. You have also indicated here today that part of the display that you seek on the Capitol Square would be a disclaimer sign, is that correct?
A. That's correct.
Q. What would that sign say?
A. As I said, it is open to discussion. The gist of the disclaimer would be that it has been erected by private individuals, and that it would not constitute acceptance or that it was being condoned by the state, and that we believe that it was put there as an expression of the Christmas season or the holiday season and as an expression that all religious views should be shared equally in public forums.

[58]

Q. In fact I believe you-stated., and in fact the sign, as I understand it, would state specifically, that this is for the purpose of expressing respect for the holiday

season, is that correct?
A. As I said, the sign is open -- the sign has not been written yet, sir. It is open to discussion.
Q. I would simply reference in the stipulation of fact number 32, the content as stated to the board is for the purpose of expressing respect for the holiday season.
That is in harmony with your views?
A. Yes.
Q. In your original application for a permit, was there any mention of any such sign or disclaimer?
A. No.
Q. When did you decide to add a disclaimer?
A. I knew personally all along that a disclaimer would need to be placed on the cross as we did not want to have the cross displayed without a disclaimer on it.
Q. But you didn't indicate that to the board when you submitted the permit application?
A. No. The only -
Q. That is fine.
MR. GOLDBERGER: He should be permitted to explain his answer.
THE COURT: We are going to have one lawyer for

[61]

understand to be the quintessential and principal and central religious symbol of the Christian faith, and

you
indicated that in fact the cross has been used by your
organization for 128 years. Is that correct?
A. Yes. I would also like to stipulate our organization
is the Knights of the Ku Klux Klan. When we refer to Ku
Klux Klan, it could be one of various groups.
Q. But I believe you testified, sir that your
organization -- that was your characterization -- has been
using the cross for 128 years?
A. Yes.
Q. That dates back to what date?
A. 1865 is when the Ku Klux Klan was formed; so -
Q. And in what manner has your organization used the
cross over the years?
A. Well, I can only speak for obviously the time that I
have been in the movement, but historically, the cross has
been used, as I said, as a symbol of freedom, as a symbol
of trying to unite our people. We try to unite our people
under the cross. We try to use the cross as a symbol of
freedom from tyranny. The cross was also incorporated in
the confederate battle flag, which I don't know if you are
familiar with that or not.
Q. I am.

A. But the cross is incorporated in that also, and the

THE COURT: Yes.

Q You're an ordained cantor of the Jewish faith?

A Yes, I am.

Q Where did you obtain your ordination?

A I was ordained at the Jewish Theological Seminary in New York in 1982.

Q Is that the same seminary where Rabbi Berman was ordained

A Yes.

-- as a rabbi?

A As a rabbi, as a graduate of the rabbinical school of that seminary, and I'm a graduate of the cantorial school. And both cantors and rabbis serving congregations are considered to be ministers according to the guidelines set down by the state.

Q Does the state permit you to perform marriages?

A Yes.

Q By your education and training, are you familiar with the precepts of Judaism?

A Yes, I am.

Q Are you familiar with the bible?

A Yes.

Q And with Talmudic matters?

A Yes.

MR. WOLMAN: We ask that he be

considered an expert,

[70]

your Honor.

THE COURT: Is there any objection to that,

Mr. Cordray?

MR. CORDRAY: We have no objection, your Honor.

THE COURT: Very well.

Q Cantor, can you tell us, in your own words, what the

menorah means?

The menora is a religious symbol. It is used in

conjunction with fulfilling the obligations incumbent upon

Jew for the celebration of the festival of Hanukkah.

Q By a menorah, we are here discussing, I take it, the

nine-branch candelabrum?

A Yes.

Q As opposed to other kinds of candelabra?

A Yes, definitely.

Q How do you feel about the menorah?

A Well, it's a I think --

MR. CORDRAY: Your Honor --

THE COURT: Just one moment. Yes, Mr. Cordray.

MR. CORDRAY: Objection. I'm not sure how the

witness knows how to respond to the question.

THE COURT: His own subjective feelings would not be

relevant. Sustained. Go ahead. Rephrase the question.

Q Cantor, do you regard the menorah as a symbol of the

25 Jewish faith?

[71]

1 A I regard the menorah as a religious symbol. It is
2 important in its use to perform a religious obligation,
3 and I take exception to the suggestion that it is not a
4 religious symbol.
5 Q Do you know of any other faiths that use that nine-branch candelabrum menorah?
7 A I am not aware of any, though I don't consider that
8 there are some faiths which are extremely welcoming of the
9 rituals of other faiths. It is possible that there might be
10 another faith which does.
11 Q But you re no. aware of any?
12 A I am not aware of any.
13 Q Are you familiar with the so-called Jewish star?
14 A Yes, I am.
15 Q Is that a symbol of the Jewish faith?
16 A I consider that to be a purely secular symbol.
17 Q In what way is it a secular symbol?
18 A We see that symbol adorning various different objects
19 and people. But it is not used in conjunction with any
20 religious obligations.
21 Q Is it used as the symbol of any governments?
22 A Yes. It is used as the symbol of the government of the

state of Israel. But again, in that regard, I don't see that as invalidating my previous statement.

Q Is it used for commercial products, such as a wine?

[75]

Q What's the difference between festival and season?

A The festival is eight days. The season is something of a longer time and it actually suggests other seasons which are celebrated at this time of the year with which there would certainly be no connection of the Hanukkah.

Q But, for example, in this case Rabbi Capland was permitted to erect a menorah on the capitol grounds from December 8 to December 16, which as I understand it coincides with the festival season taken in the limited sense of the dates that are inclusive of the Hanukkah festival; is that correct?

A The festival of Hanukkah is eight days long. I take some exception to the use of the word season, but this is a court, and that word, you know --

Q I understand. But the festival runs from December 8 to December 16, at least it did this year; is that correct?

A Yes.

MR. CORDRAY: I have no further

questions, your
18 Honor.
19 THE COURT: Anything further, Mr. Wolman?
20 MR. WOLMAN: Just two, your Honor.

- - -

22 REDIRECT EXAMINATION
23 BY MR. WOLMAN:
24 Q Cantor Chomsky what do most Jews do with the menorah?
25 A They put candles in it as appropriate, as prescribed by

[76]

1 our tradition, and they recite blessings which state as part
2 of the blessings that we were commanded to perform this act.
3 Blessings such as this make this into very much a ritual act.
4 Based on your experience and training, do most Jews regard
5 this as a religious symbol?
6 A Yes.
7 MR. WOLMAN: Thank you.
8 THE COURT: Anything further, Mr. Cordray?
9 MR. CORDRAY: No, your Honor.
10 THE COURT: Cantor Chomsky, thank you very much.
11 You may step down.
12 Next witness.

Jerry Bunge

13 MR. GOLDBERGER: Jerry Bunge Your Honor, we're
14 calling Mr. Jerry Bunge to the stand and he's on his way

into the room. I'm a little perplexed as to what to do when one finds a preliminary injunction consolidated with a trial on the merits. I get nervous about what's in and what's out. Why don't you take the stand.

THE COURT: Sir, step right up here and be sworn.

MR. GOLDBERGER: Basically, the purpose of his testimony is to describe very, very briefly the kinds of events that occur outside of the courthouse -- or, excuse me, outside of the Capitol Square. The Court made reference to some of these kinds of events.

THE COURT: Let's have the clerk swear the witness.

[77]

Mr. Goldberger, you may proceed.

- - -

JERRY BUNGE

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOLDBERGER:

Q Would you please state your name, Mr. Bunge.

A Jerry Bunge, B-U-N-G-E.

Q Your occupation?

A I'm an attorney and project director of Citizens for Justice, a statewide gay-lesbian bisexual political

activist group
Q Can you tell me if you've had any occasion to work with
an organization called the Stonewall Union
A Yes, I have. I have been a member since approximately
1985, and I was the president of the board in the 1987-88
year, I believe.
Q And what is the Stonewall Union?
A The Stonewall Union is a central Ohio gay-lesbian bisexual advocacy group.
Q has the stonewall union ever had occasion to have
gatherings in the vicinity of the state capitol?
A Yes. From the early 80s, I believe the first was in
1981, through approximately 1988, the Stonewall Union held a

[78]

rally on the statehouse square every year in June.
Q And were you present at those rallies?
A I was present at several of them.
Q Were you present at the rallies in the late 1980s?
A Yes.
Q Can you tell me, to the best of your recollection,
about how many people attended the rallies in 1988?
A I believe in 1988 there were somewhere between five-and
seven thousand people present on the square.
Q That would be on the west side of the statehouse?
A Yes, the west lawn.

Q And was that event held pursuant to a permit?
A Yes
Q Who granted that permit?
A I don't know exactly who granted it. It was whoever the appropriate statehouse authorities were.
Q At the time?
A At the time.
MR. GOLDBERGER: I have no further questions your Honor.
THE COURT: Mr. Cordray, any questions?
MR. CORDRAY: Briefly, you Honor.

- - -

Joseph Cooper [80]

THE COURT: Sir, I'm having trouble hearing you and I'm sure others are also.
A 519 Pin Cherry Lane in Worthington.
THE COURT:
Q What's your organization?
A I'm a potter.
Q Are you a member of organizations related to that profession?
A Yes,I belong to the Ohio Designer Craftsmen.
Q Are you familiar with the Capitol Square grounds?
A I am.
Q In what way related to Ohio Designer Craftsmen might

you be familiar with Capitol Square grounds?
A In the past, I'm not sure of the exact years, the festival that's now called the arts festival and is now held on Front Street or thereabouts, was held on the state grounds.
Q And, in the course of that, were there many booths?
A Yes. The booths extended probably from the west and on the south side around onto the High Street side and then to the entrance on the Broad Street side.
Q Were those booths there for several days?
A Yes.
MR. WOLMAN. Thank you. Pardon me. Excuse me, your honor.
Q Are you familiar with United Way displays of any kind on

[81]

the statehouse square?
A I do recall that they erected a thermometer, a gauge.
Q A campaign thermometer?
A Yes.
Q And was that free standing?
A I think it was on the northwest corner of the building.
Q Of the building or the lawn?
A I think it was actually on the building, that's my recollection. I'm fairly certain. This is something you could get a picture of in the Columbus Dispatch.

Q That was left up for substantial period of time.
I would suppose.
Q Do you recall seeing it there more than once?
Yes.
MR. WOLMAN: Thank you
THE COURT: Mr. Cordray, any questions?
MR CORDRAY: Yes, sir.

- - -

CROSS-EXAMINATION

BY MR. CORDRAY:

Q When the Ohio Arts Festival was held at the Capitol Square, sir, and booths were erected, were they erected in conjunction with the festival and therefore were to be populated during the festival by individuals showing their wares and individuals coming to look at or perhaps buy wears?

[82]

A Yes, that's true.
Q You spoke of the United Way thermometer that you believe you have seen displayed at Capitol Square on prior occasions.
A Yes.
Q What did that signify to you?
A It was a gauge of the contributions and the progress towards their goal.
Q And would you take that display as signifying that the

state government was willing to endorse and promote the
United Way's fund raising campaign.
A I really can't answer that question. I'm not trying to
evade it, but I have no opinion on that.
Q I see. The fact that the state permits the United Way
to erect their thermometer and let people know how they're
doing in their fund raising drive, would you have any
reaction as to whether you thought that meant that the state
approved of and was willing to support United Way?
MR. WOLMAN: Objection, asked and answered.
THE COURT: Overruled.
THE WITNESS: I would say that if I had heard that
the state did not allow it, that that would indicate a
disapproval. So I think you could infer that its presence
was in support of the activity.
MR. CORDRAY: Thank you, sir.
No further questions, your Honor.

[83]

THE COURT: Anything further, Mr. Wolman?
MR. WOLMAN: Nothing further, you Honor.
THE COURT: Mr. Cooper, thank you very much, sir.
You may step down.
Any further witnesses on behalf of the

plaintiff?

THE WITNESS: Can I stay in here now?

THE COURT: You're excused now, sir. Thank you very much. Can you remain in the courtroom.

THE WITNESS: Yes

THE COURT: There is no objection; is there?

MR. CORDRAY: No, objection, your Honor.

THE COURT: Yes sir. You may find a seat in the back of the courtroom.

Any further witnesses on behalf of the plaintiff?

MR. GOLDBERGER: Mr. Keller.

THE COURT: I didn't hear you.

MR. GOLDBERGER: We'd like to call the executive director as if on cross, your Honor.

THE COURT: Sir, would you step forward and be sworn.

THE COURT: Mr. Cordray?

MR. CORDRAY: We understand Mr. Keller is being called as if on cross-examination.

THE COURT: That's correct. That's what counsel stated. All right.

Mr. Goldberger, you may proceed.

A Yes, sir, that's correct.

Q Are many permits granted for -- well, is more than one or two permits a year granted for use of the Capitol Square

grounds on the west side of the building each year?
A Yes, sir.
Q Is there -- can you tell me about how many have been granted this year, estimate?
A Many, many dozens.
Q Many dozens. Can you just kind of, off the top of your head, recall the names of any of the groups that have done it?
A Central Ohio Transit Authority.
THE COURT: Keep your voice up, sir. Central Ohio Transit Authority.
A Central Ohio Transit Authority, the Ohio Environmental Protection Agency, the Department of Administrative Services
Q Any private groups, sir?
A Private groups -- there have been some that have used the statehouse property.
Q Can you tell us was there a meeting on -- when was the first meeting to consider the use of the Capitol Square grounds for Christmas-related displays this year?
A This past summer.
Q When was the first meeting in which the particular
A displays were discussed in November?
A Do that again, please.

[87]

cross at that time?
A I remember being asked if the members of the Ku Klux

Klan had taken out a permit.

Q What was your answer to that question?

No, they had not.

Q What else was said about it?

A Well, that's about all I recollect.

Q Isn't it true sir, that the decision was made at that meeting not to permit the Christmas tree, or not to have the Christmas tree, during this Christmas season?

A Yes.

Q Isn't it also true that there was a decision not to grant a permit for display of the menorah during this Christmas season?

A There was a vote taken in open session not to permit the use of a Christmas tree or the menorah.

Q Isn't it true that one of the reasons that was given during that open session was that if those things were displayed, it might prompt groups such as the Ku Klux Klan to erect a cross?

A In open session I don't recollect that being said.

Q Was it said somewhere else? Was it said in closed session?

MR. CORDRAY: Objection your Honor. I think that counsel is now asking about executive session that would have

involved advice of counsel and discussions that were privileged between counsel and the board members.

THE COURT: All right. Mr. Goldberger, please rephrase your question so as to exclude any conferences with counsel.

Q Was there any lawyer at that first session?

A Yes.

Q Who was it?

A Christopher Cook.

Q Was the subject matter of that session the Ku Klux Klan cross?

MR. CORDRAY: Excuse me, your Honor.

MR. GOLDBERGER: I think we're entitled to that information

MR. CORDRAY: When he says that session --

THE COURT: Just a moment, just a moment, just a moment. Any communications that the board made to counsel for the purpose of receiving legal advice would be privileged.

MR. GOLDBERGER: Thank your Honor.

THE COURT: If they conducted deliberations with counsel present, that is not privileged. So phrase your question appropriately.

Q Was there any discussion amongst the members of the board

or any statements to you personally by a member of the board, or that you overheard that was not to counsel or did

[91]

Q Did any member make a public announcement afterward as to why the vote was taken to exclude the menorah and not to have the tree?

A There were interviews by members of the media when members of the board responded to their questions.

Q And were you present at any of those interviews?

A No.

Q Did you give any of those interviews?

A I was approached by one or two members of the media, yes.

Q Did you not tell them that the reason that the menorah and the Christmas tree were not being displayed that year was to avoid having to give permission for the cross?

A I don't recollect that I said that.

Q You recollect not saying it, sir?

A No.

Q I assume that --

A I don't recollect one way or the other.

MR. GOLDBERGER: I have no further questions, your Honor -- I have one additional question.

Q There was a subsequent meeting; was there not? Wasn't there a meeting last week?

A There was a meeting last week, on the 16th of December.
Q Can you tell me what happened at that meeting with
respect to the Ku Klux Klan cross?
A Nothing.

[94]

Q Did the board,or did you receive a letter from Governor
Voinovich, Vern Riffe, Stanley Aronoff and others concerning
the Christmas displays?
A Yes, we did.
Q Do you have a copy of that letter here in the courtroom?
A No, I don't.
Q Does anyone? What was the sum and substance of that
letter, as long as we don't have -- I assume we don't have a
copy.Do we have a copy of that letter here in the courtroom?
MR. CORDRAY: Objection, your Honor. Is this
question being directed to the witness-s or to the courtroom
or --
THE COURT: First it was addressed to the witness--
MR. GOLDBERGER: He said --
THE COURT: -- and his question was: What's the sum
and substance of the letter that was received.
THE WITNESS: Basically, it was a letter from the
above-mentioned individuals asking the board to

rescind
their decision on holiday displays.
MR. GOLDBERGER: I have no further questions,
your Honor.
THE COURT: Do the plaintiffs have any further
witnesses?
MR. CORDRAY: Your Honor?
THE COURT: Yes, Mr. Cordray.

[97]

are you aware of any free-standing displays that have been
permitted to be erected and left on Capitol Square separate
and apart from an event or a rally or an assembly of any kind?
A No.
MR. CORDRAY: No further questions, your Honor.
THE COURT: Mr. Goldberger, you may cross-examine.

CROSS-EXAMINATION

BY MR. GOLDBERGER:

Q How long have you been employed by the Capitol Square
Review Board, sir?
A Earlier this year.
Q So you're basically -- when you know of no other
activities, you're speaking from fairly short duration of
employment, sir?
A The Capitol Square Review and Advisory Board has only

recently gained the control of the complete facility known as Capitol Square.

Q You indicated that one of the reasons, or the reason that you turned down this application was because it appeared to you to be a religious symbol that was being requested; isn't that correct?

A That's correct.

Q And you also granted authorization for the display of a menorah on your own decision; isn't that correct?

[98]

A Yes, that's correct.

Q Is it your position that the menorah -- display of the menorah is less religious and therefore not an establishment of religion?

A It has come to my attention that, in courts, both the Christmas tree, or the holiday tree and the menorah have been ruled secular objection.

MR. GOLDBERGER: We have no further questions, your honor.

THE COURT: Anything further, Mr. Cordray?

MR. CORDRAY: Nothing, your Honor.

THE COURT: All right, Mr. Keller. Thank you very much, sir. You may resume your seat.

Do the defendants have any further witnesses?

MR. CORDRAY: We would like to call,

your Honor,
Vincent Pinette to the stand.
MR. GOLDBERGER: I will be handling the objections
on this witness, your Honor.

Vincent Pinette

- - -

VINCENT PINETTE

called on behalf of the defendants, having been first duly
sworn, testified as follows:

EXAMINATION

BY MR. CORDRAY:

Q Sir, would you state your name and address for the

[99]

record, please?
A My name is Vincent Pinette, and my address is P.O. Box
620007, Cleveland, Ohio.
Q What is your position, sir?
A I am the regional coordinator, grand titan for the
Realm of Ohio, Knights of the Ku Klux Klan.
Q Sir, what is a realm, when you refer to the realm of Ohio?
A State.
Q That is merely your organization's parlance for the
State of Ohio?
A That's correct.
Q Mr. Pinette, why is it that your organization wanted to
display a cross on Capitol Square during the December month
of his year?

A Well, we felt that other entities were being repre-
sented, you know, such as the Christmas tree and the Jewish
menorah, as we are all aware here, so we felt we were most
certainly entitled to freedom of expression also and would
like to have seen the Christian cross represented up there.
Q Sir, do you understand the cross to be a holiday
seasonal symbol?
A Do I understand it to be? I guess it depends on from
whose eyes you are looking at it. It could be symbolic of
the holiday season depending on who you're asking the
question to.

[100]

Q And I'm asking the question to you, sir.
A Okay. Well, in my eyes I think it's got a good
representation of Christmas, yes, or the holiday season.
Q Sir, in Christian doctrine, as you understand it, does
the cross represent the crucifixion and resurrection of
Jesus Christ.
MR. GOLDBERGER: I object. I'm not sure that --
THE COURT: Sustained.
MR. CORDRAY: I'm sorry. On what basis was the

objection made and sustained?

THE COURT: Well, I'll tell you why I sustained it. I haven't heard anything that would qualify this gentleman as having any expertise in Christian doctrine. I'm not really sure how it's relevant to the issues in this case.

MR. CORDRAY: I see, your Honor. I'm attempting to ask as to the purpose that this gentleman understands he and others in his organization sought to erect a cross on Capitol Square and therefore, in addition to that, what significance that its display there would convey in their minds. And I think that that's certainly relevant on the issue of what this symbol --

THE COURT: I think he's answered the question. Let's move on to something else.

MR. CORDRAY: Could I ask the Court for back the original newspaper article that I handed up which is

[101]

Defendant's Exhibit C? May I approach the witness?

THE COURT: Yes.

Q Mr. Pinette, I'm handing you what has been marked as Defendant's Exhibit C. As you see, it's a newspaper article

from the Columbus Dispatch on Thursday, November 25, 1993,
in which you're quoted in particular at-the end of column
one, moving on to column two. Would you read that paragraph
into the record, pleases.
Second paragraph, or third paragraph?
Q I'm talking about the paragraph that is at the end of
the first column and carries over on to column two.
A Where I said the Klan doesn't have a problem with a
Christmas tree?
Q Yes, sir.
A Is that the quote you're referring to?
Q Yes, I am.
A He said, "But we feel if the Jews are going to have a
menorah, we should put up a symbol for our Lord, Jesus
Christ." Shall I read on?
Q I believe you just did. And did you in fact say that,
Mr. Pinette?
A I did feel that if the Jews were going to be able to
represent a menorah which we in the Klan feel is a religious
symbol for the Jewish belief I did say that I would like to
see the cross erected for our symbolism also -- our right to

[102]

expression.
Q Is that what you said in that paragraph, sir?

MR. GOLDBERGER: Your Honor, I think --

THE COURT: Just a moment. If you have an objection, stand and say I object.

MR. GOLDBERGER: I object. I believe it speaks for

THE COURT: Stop right there. If I want to hear argument on the objection, I'll ask you for it. You asked him if he made the statement contained in the newspaper article?

MR. CORDRAY: Correct. And I don't think I got a direct answer.

THE COURT: You never got an answer. Did you make the statement you're quoted as making in the newspaper cll article?

THE WITNESS: I was just going to ask --

THE COURT: Answer it yes or no. Did you make that statement or not?

THE WITNESS: Yes.

THE COURT: Now go ahead.

THE WITNESS: I made the statement.

Q Mr. Pinette, you belong to an organization known as the Knights of Ku Klux Klan. There was testimony earlier from Mr Mr. Carr that one of the central objectives of that organi-zation is -- and I quote his testimony -- "to establish a

Christian government in America." Would you agree that that

REPORT AND RECOMMENDATION OF
ADMINISTRATIVE HEARING EXAMINER
[Reprinted in appendix to petition for a writ of certiorari p. A27]

OPINION AND ORDER OF THE DISTRICT COURT

[Reprinted in appendix to petition for a writ of certiorari p. A13]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Vincent J. Pinette, et al. :

v. : Judgment In A Civil Case

Capital Square Review and Advisory Board, et al. : Case Number: C-2-93-1162

____ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the defendants shall issue a permit to the Knights of the Ku Klux Klan (Ohio Realm) to erect a cross on the Capitol Square for the remainder of the period from today's date until December 24, 1993.

December 21, 1993

Date

Kenneth J. Murphy

Clerk

Beverly J. Robinson

(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT J. PINETTE, ET AL.,	:	
	:	
Plaintiffs,	:	
v.	:	CASE NO.
	:	C2-93-1162
CAPITAL SQUARE REVIEW AND	:	
ADVISORY BOARD, RONALD T.	:	JUDGE
KELLER, DANIEL SHELLENBARGER	:	GRAHAM
SENATOR RICHARD H. FINAN,	:	
	:	
Defendants.	:	

NOTICE OF APPEAL

Notice is hereby given that Defendants, Capital Square Review and Advisory Board, Ronald T. Keller, Daniel Shellenbarger, and Senator Richard H. Finan, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the December 21, 1993 Order of this Court granting Plaintiffs an injunction requiring Defendants to issue a permit to erect a cross on Capital Square for the remainder of the time between todays date (December 21, 1993) and December 24, 1993.

Respectfully submitted,

LEE FISHER
Attorney General

RICHARD A. CORDRAY
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State Solicitor

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COUNSEL FOR
DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing notice of Appeal has been forwarded to Benson A. Wolman and David Goldberger, Moots, Cope and Stanton, 3600 Olentangy River Road, Suite 501, Columbus, Ohio 43214-3913, attorneys for Plaintiffs, via facsimile and the U.S. Mail, postage prepaid, this 21st day of December, 1993.

RICHARD A. CORDRAY
(0038034)
State Solicitor
CHRISTOPHER S. COOK
(0053067)
Assistant Attorney General
State Office Tower
30 East Broad Street, 17th Floor
Columbus, Ohio 43215-3428

MR. WOLMAN: We'll subsequently tender some evidence to that, your Honor. We'll move to the next tape. This is broadcast No. 5 which was aired on November 18, 1993.

THE COURT: Mr. Cordray?

MR. CORDRAY: Again, your Honor, not to suggest how anyone should proceed, but if we want to merely speed things along, we would stipulate that this is a relatively accurate transcript of the tape and perhaps he could merely question Mr. Cohen about whatever background Mr. Cohen needs to provide and we could move this along.

THE COURT: Well, I'd like to hear the tape.

MR. CORDRAY: Okay.

"Officials in charge of the Capitol grounds say they hate the Klan but there is nothing they can do to block the KKK from going ahead with plans to hold a January 15 rally protesting the Martin Luther King holiday.

"It's called the First Amendment rights of the United States Constitution.

"That is State Senator Richard Finan, head of

the
agency that controls the statehouse grounds. After the KKK
held a statehouse rally in October that featured 500 police
and highway patrol officers holding back a thousand anti-Klan
protestors, officials sent the Klan several bills to pay for
the extraordinary protection. They totalled more than
$100,000. Klan leaders refused to pay and for a while state

[30]

officials declared that meant the Klan would never get the
okay to hold a second rally. Now, though, after meeting with
their lawyer, officials, like Finan, are conceding they do
not have court precedence on their side.
"We would love to have a basis for denying the Klan
the right to come here. We explored ideas of they didn't pay
the bill, does that give us any defense? The bottom line
answer is 'no.'
"Reaction to the decision is fairly predictable.
Ohio Klan leader Vince Pinette from Cleveland says he's
delighted but not surprised.
"We knew that standing on that First Amendment,
God-given, inalienable, constitutional rights, that there
would be no way they could put a price tag on free

speech.

"And on the other side, critics of the Klan are upset. Keith Gilty, who's an OSU professor who helped organize the last protest against the Klan:

"I'm disappointed that the State is going to allow a group that advocates genocide to have public rallies on its grounds. If the Klan happened to be a group of so-called Palestinian terrorists or something of that sort, there's no way they'd ever be granted a permit to speak in public. The problem here is that apparently Ohio state officials are not willing to acknowledge what the Klan really is.

"There's an ironic twist to this story. At the same [31] time state officials were giving the green light to the Klan, they put up a red light to the traditional official state holiday tree and an unofficial Hanukkah menorah, both of which had graced the statehouse grounds for years. Senator Finan said he wanted to avoid having Columbus go through what Cincinnati went through last year, and may go through again this year.

"Last holiday season, after a tree and menorah were put up in a public square in the Queen City, the Klan went to

court for a ruling allowing them to erect a 15-foot tall cross. Vandals kept knocking it down, so city officials were later ordered to provide special police protection for the Klan project. Senator Finan says this year no holiday symbols will be allowed at the statehouse and that way the Klan won't get its symbol in the door either. It may seem strange that the Klan is being allowed to hold a second rally while mainstream religious symbols are barred. But Finan says the two situations are very different.

"We could keep the Ku Klux Klan off of the statehouse grounds. All we have to do is bar everybody else. We're not prepared to do that. It's a little easier to bar a holiday tree than it is to bar everybody from the statehouse.

"Bill Cohen at the Ohio Public Radio, Statehouse News Bureau."

Q Mr. Cohen, you heard that report. Is that a fair and

[32]

accurate representation of what was aired?

A Yes.

Q In your opening comments in that report, you said officials in charge of the Capitol grounds say that they hate the Klan but there is nothing they can do to block the

KKK.
Who are those officials?
A Well, I was referring generally to Senator Finan.
Q And what's his position, if you know?
A Chairman.
Q Is he chairman of the Capitol Square Review and Advisory Board?
A Yes.
Q And he is one of the defendants in this case.
THE COURT: Now, I have had the opportunity to scan the transcripts of the next three tapes, I believe, there are three more tapes. It appears that all of this has to do with the controversy surrounding the menorah and the Christmas tree and the cross. Some of it may indeed be relevant to this case but it doesn't deal with what was said at the October rally, and it doesn't contain any examples of the speech of the plaintiffs in this case.
And I just don't see any reason to take the time to listen to those tapes in view of Mr. Cordray's willingness to stipulate that the speakers said what they're quoted as saying in the transcripts. And you are stipulating that;

[33]

right, Mr. Cordray?
MR. CORDRAY: Yes, we are, your Honor.

THE COURT: I think we can speed things along. I can read these.

MR. WOLMAN: That's fine. Thank you, your Honor. Your Honor, we do wish to characterize those statements made or referred to by Mr. Cohen and his reports of statements where they aren't actually quoted --

THE COURT: All right.

MR. WOLMAN: -- as being admissions of defendants.

THE COURT: Anything further then of Mr. Cohen then?

MR. CORDRAY: I'm sorry, your Honor, I didn't follow that last comment. I thought Mr. Wolman said that he wanted to be able to characterize the statements made by Mr. Cohen as admissions of the defendants. If that's what he said, I would object to that. Maybe that's not what he meant to say.

THE COURT: Look, you don't want him to have to say that in every instance in which Mr. Finan says something on this tape, that he in fact said it. The Court will determine whether that represents any kind of admission. My only purpose now is to simply establish that counsel are in agreement that the tapes are accurate and the transcripts are

accurate, the people who are identified spoke the words they're quoted as saying. Whether they amount to any admissions against interest or what the legal significance of

[34]

those statements are is open to debate.

MR. CORDRAY: That's fine, your Honor. I think we're all clear on this.

MR. WOLMAN: Your Honor, we have no further questions but Mr. Cordray may well have with regard to -- there are points within the transcript where Mr. Cohen makes --

THE COURT: I will ask Mr. Cordray if he has any questions. I have a couple questions before we proceed.

Mr. Cohen, how long have you covered the statehouse?

THE WITNESS: Since 1976.

THE COURT: I suspect you've seen a lot of demonstrations at the statehouse?

THE WITNESS: Yes.

THE COURT: What kinds of groups have you seen demonstrate there with the apparent permission of the state?

THE WITNESS: Well, I've seen pro-choice demonstrations, pro-life demonstrations, I've seen all kinds of

labor
19 rallies, labor unions, the credit unions hold a rally. And
20 I believe we've seen several political candidates have rallies
21 on the statehouse steps. I have seen dozens and dozens of
22 different groups all hold rallies or impromptu press
23 conferences.
24 THE COURT: Any religious organizations?
25 THE WITNESS: Yes, there was a prayer day, there was

[35]
1 a -- it was called National Prayer Day about a year or two
2 ago on the statehouse steps.
3 THE COURT: Have you been present during any rallies
4 or demonstrations where there were protestors present who
5 registered their protest about what was being said?
6 THE WITNESS: I can't remember any specific examples
7 right now, but I'm pretty sure that I have. Perhaps not
8 major organized demonstrations, but at least critics of
9 whoever is holding the demonstration.
10 THE COURT: Have you been present for any rallies
11 where policemen or highway patrolmen, other security
12 officers, were required to be present?
13 THE WITNESS: With some political candidates, yes.
14 THE COURT: All right, sir.
15 Mr. Wolman, any further questions in light

of the
Court's questions?
MR. WOLMAN: In light of the Court's questions,
your Honor:

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EXAMINATION

BY MR. WOLMAN:
Q I believe you stated before that you had attended the
October 23 rally.
A Yes.
Q During that rally, what was the conduct, if you observed

[89]

going to have her on the stand.
THE COURT: What are the exhibit numbers again?
THE WITNESS: 28 and 27.
MR. GOLDBERGER: Will counsel stipulate that they're
authentic documents?
MR. CORDRAY: Yes, and we will in fact have in the
courtroom the person who can speak most directly to them.
And I don't think Mr. Keller really can.
Q Mr. Keller, I would just like you to take a look at --
are there any notations of waivers of any provisions of those

documents -- on any provisions of those documents, hand-
written notations?
A On item 28, which is a permit for March for Jesus
apparently, the bond requirement appears to be waived.
Q Can you tell us --
A It says waived and initialed AC.
Q Can you tell me the date of the activity as it appears
on the permit?
A She waived -- apparently she waived the bond require-
ments on 5-11-92.
Q Take a look at the other document. Are there any
notations of waiver on that permit?
A Yes. Again, the bond requirement is not dated but
says waived and initialed. And then item 8 is waived and
initialed.

PLAINTIFFS' EXHIBIT 33

[Reprinted in brief in opposition to writ of certiorari p. RA11]